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CHAPTER 713

An act to amend and repeal Section 2796 of, and to add and repeal Section 2796.5 of, the Public Resources Code, and to repeal Section 3 of Chapter 1094 of the Statutes of 1993, relating to mining.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 2796 of the Public Resources Code is amended to read:

2796. (a) The Legislature hereby establishes a state abandoned minerals and mineral materials mine reclamation program for the purpose of administering funds received by the state under the Surface Mining Control and Reclamation Act of 1977, or through amendments to the federal general mining laws (30 U.S.C. Secs. 1, 12A, 16, 161, and 162, and 602, et seq.) or from other funds appropriated by the Legislature for the purposes of paragraphs (1) and (2) of subdivision (b).

(b) There is an Abandoned Mine Reclamation and Minerals Fund in the State Treasury. That fund is the depository for all moneys received pursuant to this section. The money in the fund may be expended, upon appropriation, for the following purposes:

(1) Development of an inventory of mined lands, water, and facilities eligible for reclamation.

(2) Establishment by the director of an abandoned minerals and mineral materials mine reclamation program that provides for any of the following:

(A) (i) Reclamation and restoration of abandoned surface mined areas.

(ii) For purposes of this subparagraph, ''abandoned surface mined area'' means mined lands that meet all of the following requirements:

(I) Mining operations have ceased for a period of one year or more.

(II) There is no interim management plan in effect that meets the requirements of Section 2770.

(III) There are no approved financial assurances that are adequate to perform reclamation in accordance with this chapter.

(IV) The mined lands are adversely affected by past mining of minerals, as defined in Section 2005.

(B) Reclamation and restoration of abandoned milling and processing areas.

(C) Sealing, filling, and grading abandoned deep mine entries.

(D) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

(E) Prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage.

(F) Control of surface subsidence due to abandoned deep mines.

(G) The expenses necessary to accomplish the purposes of this section.

(3) To the extent those expenditures are allowed by the applicable statutes:

(A) Grants to lead agencies for the purposes of carrying out this chapter.

(B) Implementation of this chapter and Section 2207 by the department, which may include an offsetting reduction in the amount of reporting fees collected from each active and idle mining operation and deposited in the Mine Reclamation Account pursuant to subdivision (d) of Section 2207, as determined by the director.

(c) The state abandoned minerals and mineral materials mine reclamation program may receive funds from all of the following:

(1) Disbursements made by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act (30 U.S.C. Sec. 191), with respect to royalties levied on the production of locatable minerals or mineral concentrates from any mining claim located on federal lands in the state, but excluding oil, gas, and geothermal revenues.

(2) Other revenues that may be received, including, but not limited to, grants, royalties, donations, penalties, settlements, or gifts, or funds appropriated by the Legislature.

(d) The federal funds specified in paragraph (1) of subdivision (c) do not include the funds deposited in the Surface Mining and Reclamation Account pursuant to Section 2795, the funds deposited in the Geothermal Resources Development Account pursuant to Section 3820, or the funds deposited in the State School Fund pursuant to Section 12320 of the Education Code.

(e) The expenditure of funds from the Abandoned Mine Reclamation and Minerals Fund for the abandoned minerals and mining materials mine reclamation program shall reflect the following priorities :

(1) The protection of public health and safety and the environment from the adverse effects of past minerals and mineral materials mining practices.

(2) The protection of property that is in extreme danger as a result of past minerals and mineral materials mining practices.

(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

(f) Proposed expenditures from the Abandoned Mine Reclamation and Minerals Fund for the purposes of the abandoned minerals and

mining materials mine reclamation program shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the fund shall be subject to all the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

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

SEC. 2. Section 2796.5 is added to the Public Resources Code, to read:

2796.5. (a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d) (1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The director may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the director may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Government Code.

(4) The director shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, the director may enter the property without consent or the issuance of a warrant.

(e) For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the director to the extent of the director's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

(f) (1) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

(2) Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien

or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the director, for a money judgment. Money recovered by a judgment in favor of the director shall be used for the purposes of this chapter.

(g) If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of preventing the director from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.

(h) ''Remediate,'' for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

(i) ''Threaten,'' for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(j) This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

(k) The director may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

(*l*) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

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

SEC. 3. Section 3 of Chapter 1094 of the Statutes of 1993 is repealed.

SEC. 4. It is the sense of the Legislature that a significant barrier to the reclamation and remediation of abandoned mine sites is the threat of federal liability under the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), and the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6901 et seq.). The Legislature calls upon the Governor to promote Good Samaritan legislation that will change federal law to provide liability relief to the

state, its contractors, and others for completing reclamation or remediation work, or both, on abandoned mine sites.

CHAPTER 714

An act to amend Section 1 of Chapter 700 of the Statutes of 1911, and to authorize an exchange of public trust lands within the former Naval Training Center, San Diego, relating to trust property.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 1 of Chapter 700 of the Statutes of 1911 is amended to read:

Section 1. (a) There is hereby granted and conveyed to the City of San Diego, in the county of San Diego, State of California, all the lands situate on the City of San Diego side of said bay, lying and being between the line of mean high tide and the pierhead line in said bay, as the same has been or, may hereafter be established by the federal government, and between the prolongation into the bay of San Diego to the pier head line of the boundary line between the City of San Diego and National City, and the prolongation into the bay of San Diego to the pierhead line of the northerly line of the United States military reservation on Point Loma.

(b) There is hereby granted to the City of San Diego (hereafter ''city''), a municipal corporation of the State of California, and to its successors, all the right, title, and interest of the State of California, held by the state by virtue of its sovereignty, in and to all the tide and submerged lands, whether filled or unfilled, within the present boundaries of the city, and situated below the historical line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay, or inlet within said boundaries, except as the Legislature has previously conveyed those lands to other entities, and except as to lands that the city has previously conveyed to other entities, (such as the San Diego Unified Port District by Conveyance filed for record February 1963, in Series 4, Book 1963, page 28389).

(c) The city shall be the public trust administrator for all lands granted to it pursuant to this section (hereinafter ''granted lands''), and may use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control those lands and do all things necessary in connection with those lands that are in conformance with the terms of this section and the public trust for commerce, navigation, and fisheries, except as

to any of the lands that are freed of the public trust by exchange agreements authorized by statute.

(d) The city, or its successors, shall not at any time grant, convey, give, or alienate the granted lands, or any part of them, to any individual, firm, or corporation for any purpose whatever, except as provided in this section or otherwise provided by statute, and except as to any lands freed of the public trust by exchange agreements authorized by statute. This subdivision shall not be construed to prohibit the conveyance of any lands within the former Naval Training Center, San Diego, including lands previously granted to the city and subsequently transferred to the United States, to the San Diego Unified Port District (''port'') by the city.

(e) Notwithstanding the foregoing restriction on alienation, the city, or its successors, may grant franchises, permits, privileges, licenses, easements, or leasehold interests (collectively referred to as ''leases'' hereafter) in connection with those lands, or any part of those lands, for limited periods, for purposes consistent with the trusts upon which the lands are held by the State of California and this grant, for a term not exceeding 66 years, and on other terms and conditions that the city may determine, including a right to terminate the same on the terms, reservations, and conditions that may be stipulated in the lease or leases, with reversion to the city on the termination of the lease or leases of any and all improvements thereon, provided that any terms, reservations, and conditions must be consistent with the public trust and this section. All such leases may include reservations for streets, sewer outlets, gas and oil mains, hydrants, electric cables and wires, and other municipal purposes and uses as may be deemed necessary by the city, upon compensation being made for the injury and damage done to any improvement or structure thereon.

(f) All moneys collected by the city arising out of the use or operation of any of the granted lands that shall remain in the public trust, including all revenues derived from leases or other rights to use or occupy the lands, shall be deposited into a special fund maintained by the city. The money in, or belonging to, the fund may be used only for uses and purposes consistent with the public trust for navigation, commerce, and fisheries, and the requirements of this section.

(g) The State of California shall have, at all times, the right, together with the city if there be no lessee or licensee, or together with the lesser or licensee, if there be a lessee or licensee, to use, without charge, all wharves, docks, piers, slips, quays, or other improvements constructed on the granted lands or any part thereof, for any vessel or other watercraft, or railroad, owned or operated by the State of California.

(h) No discrimination in rates, tolls, or charges for use or in facilities for any use or service in connection with wharves, docks, piers, slips, or quays or property operated by the city, or property leased, the use of

which is dedicated by the lessee or licensee for a public use, shall ever be made, authorized, or permitted.

(i) There is hereby reserved in the people of the State of California the right to fish in the waters on which the lands may front with the right of convenient access to those waters over the lands for that purpose, the enjoyment of access and right to fish to be regulated by ordinance of the city, so as not to interfere, obstruct, retard, or limit the right of navigation or the rights of lessees or licensees under lease or license given.

(j) Nothing in this section shall impair or affect any rights or obligations arising from leases conferring the right to use, occupy, or conduct operations upon or within the granted lands, provided the leases were lawfully entered into, consistent with any applicable public trust or other restrictions on use, prior to the effective date of the act amending this section.

SEC. 2. Sections 1 to 10, inclusive, of this act shall be known, and may be cited, as the Naval Training Center San Diego Public Trust Exchange Act.

SEC. 3. For purposes of this act, the following definitions apply unless the context requires otherwise.

(a) ''City'' means the City of San Diego.

(b) ''City granting act'' means Chapter 700 of the Statutes of 1911, as amended by Chapter 676 of the Statutes of 1915, Chapter 598 of the Statutes of 1917, Chapter 642 of the Statutes of 1929, and Chapter 693 of the Statutes of 1945.

(c) ''Commission'' means the State Lands Commission.

(d) ''NTC Property'' means those parcels of land lying in the City of San Diego, County of San Diego, State of California, being a portion of that area commonly known as Naval Training Center, San Diego, and more particularly described as follows in paragraphs (1) and (2):

(1) Parcel One: a parcel of land referred to as the ''City NTC Property'' described as follows:

PARCEL ONE
CITY NTC PROPERTY

A parcel of land referred to as the ''City NTC Property'' being Parcels 1 through 16 and 18 in the County of San Diego, City of San Diego, State of California, all as shown on Record of Survey No. 16556 filed in the Office of the County Recorder of said San Diego on April 25, 2000 as File No. 2000-210625 of Official Records, being more particularly described as follows:

Beginning at the most Northwesterly terminus of that certain line shown as ''North 54°15′14″ West 1087.60 feet'' on the Northerly line of said Record of Survey 16556; thence along the Northerly, Easterly and

Southerly lines of said Record of Survey 16556 the following courses: South 54°15′14″ East 1087.60 feet; thence North 35°45′46″ East 0.37 feet; thence South 15°38′02″ East 1934.29 feet; thence South 07°30′30″ West 412.55 feet; thence South 41°37′23″ West 482.21 feet; thence South 82°29′30″ East 270.45 feet; thence South 07°30′30″ West 1505.26 feet; thence North 82°35′20″ West 8.27 feet; thence South 07°33′09″ West 287.95 feet; thence South 82°17′51″ East 275.38 feet; thence South 83°48′36″ West 212.78 feet; thence South 07°30′41″ West 226.44 feet; thence South 83°48′36″ West 61.91 feet; thence North 07°30′29″ East 32.25 feet; thence North 81°55′00″ West 25.84 feet; thence South 41°11′00″ West 22.90 feet; thence South 18°02′00″ East 22.68 feet; thence North 83°48′36″ East 29.60 feet, thence South 07°30′30″ West 205.86 feet, thence South 83°48′36″ West 1292.59 feet to the beginning of a tangent 3900.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 24°16′43″ a distance of 1652.59 feet; thence South 59°31′53″ West 698.21 feet; thence North 11°24′16″ West 48.41 feet; thence North 30°28′07″ West 4.25 feet; thence South 59°31′53″ West 145.32 feet to the beginning of a tangent 950.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 05°45′44″ a distance of 95.54 feet; thence North 53°45′35″ West 176.88 feet to the Northwesterly line of said Parcel 16, said point being the beginning of a nontangent 800.00 foot radius curve concave Northwesterly, to which a radial line bears South 18°32′33″ East; thence leaving the Southerly line of said Record of Survey 16556, Northeasterly along the arc of said curve through a central angle of 11°55′34″ a distance of 166.52 feet; thence continuing along the Northwesterly line of said Parcel 16, North 59°31′53″ East 827.72 feet to the beginning of a tangent 4100.00 foot radius curve concave Southeasterly; thence Northeasterly along the arc of said curve through a central angle of 00°44′31″ a distance of 53.087 feet to the most Southerly point of said Parcel 12; thence leaving said Parcel 16, along the Westerly line of said Parcel 12, North 30°28′07″ West 98.45 feet to the beginning of a tangent 266.00 foot radius curve concave Easterly; thence Northerly along the arc of said curve through a central angle of 66°44′13″ a distance of 309.83 feet; thence North 36°16′06″ East 43.44 feet to the beginning of a tangent 334.00 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve through a central angle of 18°30′28″ a distance of 107.89 feet; thence North 36°16′00″ East 1307.97 feet to the Southerly line of said Parcel 6, thence leaving the Westerly line of said Parcel 12 along said Southerly line of said Parcel 6, North 53°43′30″ West 375.81 feet to the Southeasterly line of said Parcel 14; thence leaving the Southerly line of said Parcel 6, along said Southeasterly line of said Parcel 14; South 36°18′40″ West

1080.03 feet; thence North 53°43′54″ West 1427.91 feet to the Northwesterly line of said Record of Survey 16556; thence along said North Westerly line of said Record of Survey North 36°16′06″ East 5287.89 feet to the beginning of a tangent 37.00 foot radius curve concave Southerly; thence Easterly along the arc of said curve through a central angle of 89°28′40″ a distance of 57.78 feet to the Point of Beginning.

(2) Parcel Two: a parcel of land referred to as the ''Port Expansion Area'' described as follows:

PARCEL 2
PORT EXPANSION AREA

A parcel of land referred to as the ''Port Expansion Area'' and described as follows:

Commencing at a 6″ x 6″ concrete monument at the intersection of the easterly boundary of the U.S. Naval Training Center and the northerly line of North Harbor Drive as shown on Record of Survey 15213, filed in the Office of the County Recorder of San Diego County, June 14, 1996; said monument also being an angle point on the boundary between the United States Navy Land and the San Diego Unified Port District as shown on Miscellaneous Map No. 564 filed in the Office of the San Diego County Recorder May 28, 1976; thence leaving said monument and running northerly along said common boundary line between United States Navy Land and the San Diego Unified Port District North 7°30′04″ East a distance of 298.75 feet to the TRUE POINT OF BEGINNING; thence leaving said boundary line North 81°41′44″ West a distance of 169.89 feet; thence North 62°33′09″ West a distance of 75.63 feet; thence North 79°05′39″ West a distance of 50.13 feet; thence South 22°25′15″ West a distance of 29.68 feet; to the beginning of a curve concave to the south having a radius of 585.00 feet; thence westerly along the arc of said curve through a central angle of 45°37′20″ an arc distance of 465.81 feet; thence tangentially South 73°58′52″ West a distance of 53.50 feet; thence South 12°35′43″ East a distance of 78.72 feet; thence South 74°40′40″ West a distance of 69.00 feet; thence South 27°37′00″ East a distance of 96.48 feet; thence South 12°25′55″ East a distance of 36.79 feet to a point on the northerly line of an easement granted to the City of San Diego, recorded November 7, 1962, as File No. 191492 OR and shown said Record of Survey Map No. 15213; thence along said line South 83°48′36″ West a distance of 173.78 to a point of the boundary of that 1.936 acres parcel shown on Record of Survey No. 15789 filed in the Office of the County Recorder of San Diego County, April 17, 1998; thence along said boundary North 7°17′01″ East a distance of 285.12 feet; thence North 82°35′20″ West

a distance of 283.26 feet to that certain line shown as North 7°30′30″ East a distance of 3,103.29 feet on sheet six of said Record of Survey No. 15213; thence leaving the northerly line of said Record of Survey No. 15789 and along said line of Record of Survey 15213 North 7°30′30″ East a distance of 1,505.26 feet to an angle point on the boundary of said Record of Survey 15213; thence along said boundary South 82°29′30″ East a distance of 85.00 feet; thence North 39°16′25″ East a distance of 740.24 feet; thence South 73°29′30″ East a distance of 407.08 feet; thence South 16°30′30″ West a distance of 411.60 feet; thence 411.60 feet; thence South 73°29′30″ East a distance of 415.51 feet to a point on the above described common boundary line between the United States Navy and the San Diego Unified Port District; thence along said boundary line South 7°30′04″ West a distance of 1,604.11 feet to the TRUE POINT OF BEGINNING.

Courses referred to in the above descriptions are based upon the California Coordinate System, Zone 6 (N.A.D. 83).

(e) ''Port'' means the San Diego Unified Port District.

(f) ''Port granting act'' means Chapter 67 of the Statutes of 1962, as amended.

(g) ''Public trust'' or ''trust'' means the common-law and constitutional public trust for commerce, navigation and fisheries.

SEC. 4. The Legislature hereby finds and declares as follows:

(a) The purpose of this act is to facilitate the productive reuse of the lands comprising the former Naval Training Center, San Diego in a manner that will promote economic development in the City of San Diego and enhance water-related recreational opportunities in a manner that will further the purposes of the public trust for commerce, navigation, and fisheries. To effectuate these purposes, this act approves, and authorizes the commission to carry out, an exchange of lands under which certain nontrust lands on the NTC Property with substantial value for the public trust would be placed into the public trust, and certain other lands presently subject to the public trust or asserted to be, but in any event no longer useful for trust purposes, would be freed from trust restrictions. This act also delegates to the port and to the city, as specified herein, the responsibility of administering the public trust on lands within the NTC Property.

(b) In 1911, the state granted to the City of San Diego the tide and submerged lands within San Diego Bay, ''situate on the city of San Diego side of said bay,'' lying between the mean high tide line and the pierhead line, in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in that act. Section 3 of this 1911 grant prohibited the alienation of the granted lands. In 1913, by Chapter 250 of the Statutes of 1913, the Legislature

authorized cities to convey tide and submerged lands to the United States ''for public purposes.''

(c) In 1929, Chapter 642 of the Statutes of 1929 amended the 1911 grant to the City of San Diego by declaring that all areas shoreward of the bulkhead line as then established had ceased to be tidelands and were freed of all trusts and restrictions on those lands, except the restriction against alienation. The meaning and legal impact of Chapter 642 of the Statutes of 1929 remain subjects of uncertainty and disagreement. In the same year, the Legislature passed another act authorizing the grant of tide or submerged lands to the United States for public or governmental purposes, and confirmed all grants of tide and submerged lands that had been previously made.

(d) Beginning in 1916, the city made several transfers of portions of the granted lands to the United States for purposes of constructing and operating what came to be known as the Naval Training Center, San Diego. The city in 1916 conveyed 56 acres of land to the United States lying waterward of the historic mean high tide line and extending to the bulkhead line. An additional 76 acres of tidelands lying waterward of the historic mean high tide line and extending to the bulkhead line were conveyed in 1919 to the United States. Then, in 1933, the city conveyed to the United States 95 acres lying waterward of the bulkhead line and extending to the pierhead line. Most of the transferred tide and submerged lands were subsequently filled and reclaimed by the Navy in furtherance of its plan for development of the Naval Training Center. The Navy filled an additional 135 acres of submerged lands lying waterward of the pierhead line in developing NTC San Diego.

(e) The Navy also acquired and developed substantial acreage for NTC San Diego that were historically uplands, never property of the State of California in its sovereign capacity, and thus not subject to the public trust.

(f) In 1993, the Defense Base Closure and Realignment Commission recommended closure of the Naval Training Center, San Diego under the Defense Base Closure and Realignment Act of 1990, and the center was closed operationally in April, 1997. As authorized by federal law, the Navy is in the process of transferring certain portions of the NTC Property under a no-cost economic development conveyance and two public benefit conveyances to the city, the local reuse authority for the NTC San Diego. The port expansion area will be conveyed to the San Diego Unified Port District by a public benefit conveyance. All former and existing tide and submerged lands on the NTC Property for which the public trust has not been extinguished through the completion of the exchange this chapter authorizes will be subject to the public trust upon their release from federal ownership.

(g) The existing configuration of trust and nontrust lands on the NTC Property is such that the purposes of the public trust cannot be fully realized, and is the subject of dispute between the city and the state. That is because certain filled and reclaimed tidelands on the NTC Property have been cut off from access to navigable waters and are no longer needed or required for the promotion of the public trust, or any of the purposes set forth in the city granting act. Other lands on the NTC Property directly adjacent to the waterfront or otherwise of high value to the public trust are currently either public trust lands or in dispute as to their public trust status. Absent a trust exchange, substantial portions of the waterfront on the NTC Property would be subject to uncertainty regarding their public trust status and could be cut off from public access, while certain nonwaterfront lands not useful for trust purposes would be restricted to trust-consistent uses.

(h) A trust exchange that results in the configuration of trust lands substantially similar to that depicted on the diagram in Section 9 maximizes the overall benefits to the trust, without interfering with trust uses or purposes, and resolves legal uncertainties, to the benefit of the public trust. Following the exchange, all lands within the NTC Property adjacent to the waterfront will be subject to the public trust, together with the port expansion area, which shall be used for purposes permitted by the port granting act. The lands that will be removed from the trust pursuant to the exchange have been cut off from navigable waters, constitute a relatively small portion of the granted lands, and are no longer needed or required for the promotion of the public trust. The commission shall ensure that the lands or interests added to the trust pursuant to the exchange are of equal or greater value than the lands or interests taken out of the trust.

(i) The reuse of public trust lands on former military bases presents a number of challenges not normally confronted in the public trust administration of active waterfronts, including the remediation of hazardous wastes on some bases and the presence of buildings that were constructed on former tidelands during the period of federal ownership, when the public trust was effectively in abeyance. In the case of NTC Property, there is one building that falls into this category, the child care center, which will be on public trust property at the completion of the exchange. The child care center was built by the Navy for nontrust purposes, and has a remaining useful life. The child care center will lie on lands that will be subject to the public trust following the exchange authorized by this act, and the conversion of the lands underlying the child care center to trust uses should proceed in a manner that will enable the people of this state to benefit from the substantial public investments made in the buildings without hindering the overall goal of preserving the public trust.

(j) The completion of the trust exchange authorized by this act will have numerous benefits to the public trust. Among them are the creation of a wide corridor of public trust land along the northern side of the boat channel, which is planned to be developed as a public park; the confirmation as public trust land of sites for possible development of hotels; and the establishment as public trust lands of land necessary for the expansion of the San Diego Airport, together with a public access corridor along the southern side of the boat channel.

SEC. 5. (a) The Legislature hereby approves an exchange of public trust lands within the NTC Property, whereby certain public trust lands that are not now useful for public trust purposes are freed of the public trust and certain other lands that are not now public trust lands, or are subject to uncertainty as to their trust status, and that are useful for public trust purposes are made subject to the public trust, resulting in a configuration of trust lands that is substantially similar to that shown on the diagram in Section 9, provided the exchange complies with the requirements of this act. The exchange is consistent with and furthers the purposes of the public trust and the city granting act and the port granting act.

(b) The commission is authorized to carry out an exchange of public trust lands within the NTC Property, in accordance with the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include procedures for ensuring that lands are not exchanged into the trust until any necessary hazardous material remediation for those lands has been completed, and may include, if appropriate, procedures for completing the exchange in phases.

(c) The precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange shall be determined by the commission. The commission shall not approve the exchange of any trust lands unless and until all of the following occur:

(1) The commission finds that the configuration of trust lands on the NTC Property upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 9, and includes all lands presently subject to tidal action within the NTC Property.

(2) The commission finds that, with respect to the trust exchange as finally configured, the economic value of the lands that are to be exchanged into the trust, as phased, is equal to or greater than the value of the lands to be exchanged out of the trust. The commission may give economic value to the port expansion area confirmed as public trust lands as provided in subdivision (h).

(3) The commission finds that, with respect to the trust exchange as finally configured and phased, the lands to be taken out of the trust have

been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with trust uses and purposes.

(4) The exchange is approved by the entity or entities that, under the provisions of the city granting act, the port granting act, and this act, would be responsible for administering the public trust with respect to the lands to be exchanged into the trust, and any such lands will be accepted by such entity or entities subject to the public trust and the requirements of the city granting act or port granting act, as applicable.

(d) The exchange authorized by this act is subject to any additional conditions that the commission determines are necessary for the protection of the public trust. At a minimum, the commission shall establish conditions to ensure both of the following:

(1) Streets and other transportation facilities located on trust lands are designed to be compatible with the public trust.

(2) Lands are not exchanged, or confirmed, into the trust until any necessary hazardous materials remediation for those lands has been completed.

(e) All former or existing tide or submerged lands within the NTC Property for which the public trust has not been terminated pursuant to the exchange authorized by this act, and any lands exchanged or confirmed into the trust pursuant to this act, shall be held, whether by the port or by the city, subject to the public trust and the requirements of the city granting act as public trust lands within the city NTC Property, or the port granting act, as to the land within the port expansion area. In addition, notwithstanding the provisions of the city granting act, during any period in which lands confirmed to the city as lands subject to the city granting act are held by the Redevelopment Agency of the City of San Diego rather than the city, the Redevelopment Agency shall be the public trust administrator for the lands, and shall have the same powers and be subject to the same requirements as would the city under the granting act.

(f) Any lands exchanged out of the trust pursuant to this act shall be deemed free of the public trust and the requirements of the city granting act.

(g) For purposes of effectuating the exchange authorized by this act, the commission may do all of the following:

(1) Receive and accept on behalf of the state any lands or interest in lands conveyed to the state by the port or the city, including lands that are now and that will remain subject to the public trust.

(2) Convey to the city or port by patent all of the right, title, and interest of the state in lands that are to be free of the public trust upon

completion of an exchange of lands as authorized by this act and as approved by the commission.

(3) Convey to the city or port by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust and the terms of this act and the granting act upon completion of an exchange of lands as authorized by this act and as approved by the commission, subject to the terms, conditions, and reservations that the commission may determine are necessary to meet the requirements of subdivisions (d) and (e).

(h) To achieve the configuration of public trust lands shown in the diagram in Section 10, the port, simultaneous with or following its receipt of the port expansion area, shall confirm its title as tide and submerged lands subject to the port granting act by agreement with the commission. The port and the commission may make conveyances between themselves to establish the title to the port expansion area as public trust lands subject to the port granting act.

(i) In any case where the state, pursuant to this act, conveys filled tidelands and submerged lands transferred to the city pursuant to Chapter 700 of the Statutes of 1911, as amended, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding Chapter 700 of the Statutes of 1911, as amended, or Section 6401 of the Public Resources Code, the reservations shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(1) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor or assignees.

(2) Conduct any mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee's successors or assigns.

SEC. 6. (a) (1) Notwithstanding the provisions of the granting act, the existing child care center on trust lands within the NTC Property, which was constructed for nontrust purposes during the period of federal ownership and is incapable of being devoted to public trust purposes, may be used for such nontrust purposes for the remaining useful life of such building. The city and the commission, by agreement, shall establish the remaining useful life of the child care center, provided that in no case shall the useful life of the child care center be deemed to extend

less than 15 years or more than 40 years from the effective date of this act.

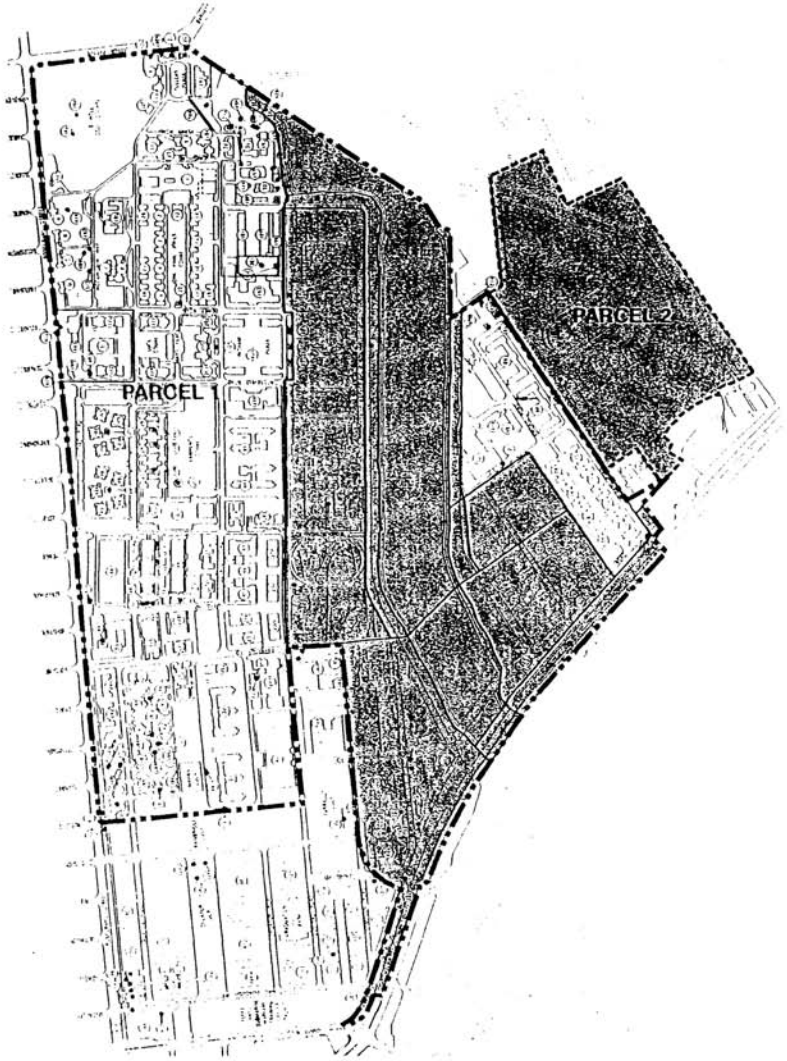
(2) The maintenance, repair, or, in the event of a flood, fire, or similar disaster, partial reconstruction of the child care center, and any structural or other alterations necessary to bring the child care center into compliance with applicable federal, state, and local health and safety standards, including, but not limited to, seismic upgrading, shall be permitted, provided those activities will not enlarge the footprint or the size of the shell of the child care center.

SEC. 7. All moneys arising out of the use or operation of any lands on the NTC Property subject to the public trust, including all revenues derived from leases, permits, franchises, privileges, licenses, easements, and the rights to use or occupy the trust lands, collected by the city as to public trust lands within the City NTC Property, or the port, as to the port expansion area, shall be maintained in a fund separate from the city's or port's general revenues. The money in or belonging to that fund may be used only for uses and purposes consistent with the public trust for navigation, commerce, and fisheries, the granting act, and this act.

SEC. 8. The state reserves the right to amend, modify, or revoke any and all rights to the lands granted to the City pursuant to Chapter 700 of the Statutes of 1911.

SEC. 9. The following diagram is hereby made a part of this act:

LOCATION OF LANDS SUBJECT TO THE PUBLIC TRUST AND THE GRANTING ACT UPON COMPLETION OF THE EXCHANGE



SEC. 10. The commission, the city, and the port shall work expeditiously toward completing the land exchange directed by this act.

SEC. 11. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands within the City of San Diego described in this act, relating to the closure of the Naval Training Center, San Diego, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

CHAPTER 715

An act to amend Section 6217.1 of the Public Resources Code, relating to fish.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 6217.1 of the Public Resources Code is amended to read:

6217.1. (a) This section and the process described in this section shall govern the expenditure of any funds received by the State of California from the federal government for the purposes of salmon and steelhead conservation and restoration.

(b) For purposes of this section, ''project'' means an activity that improves fish habitat in coastal waters utilized by salmon and anadromous trout species.

(c) (1) The Department of Fish and Game shall grant funds from the Salmon and Steelhead Trout Restoration Account in the Resources Trust Fund, as follows:

(A) At least 87.5 percent of the funds shall be allocated as project grants through the existing grant program operated by the fisheries management program of the Department of Fish and Game.

(B) Not more than 12.5 percent of the funds may also be used for project contract administration activities and biological support staff.

(2) (A) A project shall require the consent of a willing landowner, and emphasize the development of coordinated watershed improvement activities.

(B) Projects that restore habitat for salmon and anadromous trout species that are eligible for protection as listed or candidate species under

state or federal endangered species acts shall be given top funding priority.

(C) Projects shall be cost-effective and treat causes and not symptoms of fish habitat degradation. Projects may implement instream, riparian, water quality, water quantity, and watershed prescriptions and shall be designed to restore the structure and function of fish habitat.

(3) Any grant funds allocated to a project that exceed the actual cost of completing the project shall be returned to the Salmon and Steelhead Trout Restoration Account.

(d) (1) A citizen's advisory committee shall be appointed by the Director of Fish and Game, to give advice on the grant program.

(2) The advisory committee shall consist of seven representatives recommended by the California Advisory Committee on Salmon and Steelhead Trout, one representative from the agriculture industry, one representative from the timber industry, one representative of public water agency interests, one academic or research scientist with expertise in anadromous fisheries restoration, and three county supervisors from coastal counties in which anadromous trout exist. The county supervisor members shall be recommended by the California State Association of Counties.

(3) The advisory committee shall provide oversight of, and recommend priorities for, grant funding under this section. In making funding decisions, the Department of Fish and Game shall consider the project selection priorities established by the advisory committee.

(4) Members of any advisory committee established for these purposes shall be reimbursed for travel and incidental expenses related to the performance of their duties under this section. Reimbursement for the advisory committee created pursuant to this section shall be made from the funds designated in subparagraph (B) of paragraph (1) of subdivision (c). Reimbursement for other Department of Fish and Game salmon and steelhead advisory committees shall be funded by appropriate sources.

(e) Except as provided in subdivision (f), the money in the Salmon and Steelhead Trout Restoration Account shall be allocated as follows:

(1) Not less than 65 percent of the money shall be used for salmon habitat protection and restoration projects. Of that amount, at least 75 percent shall be used for watershed (upslope) and riparian area protection and restoration activities. These activities may include, but are not limited to, grants to remove substandard culverts, stream crossings, and bridges that constitute barriers to spawning of salmon and steelhead and passage of fish. These funds may also be used for the acquisition, from willing sellers, of conservation easements for riparian buffer strips along coastal rivers and streams to protect salmon and

steelhead habitat or for projects that protect and improve water quality and quantity.

(2) Up to 35 percent of the money shall be allocated for any of the following uses:

(A) Watershed evaluation, assessment, and planning necessary to develop a site-specific and clearly prioritized plan to implement watershed improvements.

(B) Multiyear grants for watershed planning and project monitoring and evaluations.

(C) Watershed organization support and assistance.

(D) Project maintenance and monitoring after the project implementations are complete.

(E) Public school watershed and fishery conservation education projects.

(F) Private sector technical training and education project grants, including teaching private landowners about practical means of improving land and water management practices that, if implemented, will contribute to the protection and restoration of salmon stream habitat; scholarship funding for workshops and conferences that teach restoration techniques; operation of nonprofit restoration technical schools; and production of restoration training and education workshops and conferences.

(G) Fish and wildlife habitat improvements, as defined by Section 4793, and authorized under the California Forestry Incentive Program (CFIP).

(H) The salmon restoration project of the California Conservation Corps.

(I) The state's share of the federal Watershed Stewards Program.

(f) The advisory committee may, in any fiscal year, make a recommendation to the Department of Fish and Game to allocate money from the Salmon and Steelhead Trout Restoration Account for the purposes stated in subdivision (e), but in different percentage requirements than the 65/35 split stated in paragraphs (1) and (2) of that subdivision. Following that recommendation, the Director of Fish and Game may suspend the percentage requirements stated in paragraphs (1) and (2) of subdivision (e) for that fiscal year only.

CHAPTER 716

An act to amend Section 21159.9 of the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2000. Filed with
Secretary of State September 27, 2000.]

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

SECTION 1. Section 21159.9 of the Public Resources Code is amended to read:

21159.9. The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish and maintain a data base to assist in the preparation of environmental documents.

(c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.

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 Office of Planning and Research fulfills its responsibilities pursuant to the California Environmental Quality Act in a manner that broadly involves the public at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 717

An act to amend Sections 8422, 8423, and 8429.7 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 25, 2000. Filed with
Secretary of State September 27, 2000.]

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

SECTION 1. Section 8422 of the Fish and Game Code is amended to read:

8422. (a) The fee for a commercial market squid vessel permit shall be four hundred dollars ($400).

(b) All applications for a commercial market squid vessel permit for the 1998–99 permit year shall be received by the department on or before April 30, 1998, or, if mailed, shall be postmarked by April 30, 1998. In order to renew a permit, an applicant shall have been issued a commercial market squid vessel permit in the immediately preceding year. Applications for renewal of the permit shall be received by the department on or before April 30 of each year, or, if mailed, shall be postmarked by April 30 of each year.

(c) Notwithstanding Section 7852.2, a penalty of two hundred fifty dollars ($250) shall be paid in addition to the fee required under subdivision (a) for applications that do not meet the deadline specified in subdivision (b) but that are received by the department on or before May 31 of any year.

(d) The department shall deny all applications received after May 31 of each year, and the application shall be returned to the applicant who may appeal the denial to the commission. If the commission issues a permit following an appeal, it shall assess the late penalty prescribed by subdivision (c).

SEC. 2. Section 8423 of the Fish and Game Code is amended to read:

8423. (a) No person shall operate a squid light boat unless the owner of the boat has been issued a commercial squid light boat owner's permit by the department and a permit number is affixed to the boat in the manner prescribed by the department.

(b) The department shall issue a commercial squid light boat owner's permit to a person who submits an application, pays the permit fee, and meets the other requirements of this section.

(c) The department may regulate the use of squid light boats consistent with the regulations established for commercial squid vessels.

(d) The fee for a commercial squid light boat owner's permit shall be four hundred dollars ($400).

(e) It is unlawful for a person to engage in the following activities, unless the vessel used for the activity has been issued a commercial market squid vessel permit or the person holds a commercial squid light boat owner's permit:

(1) Attracting squid by light displayed from a vessel, except from a vessel deploying nets for the take, possession, and landing of squid or except from the seine skiff of the vessel deploying nets for the take, possession, and landing of squid.

(2) Attracting squid by light displayed from a vessel whose primary purpose is other than the deployment, or assistance in the deployment, of nets for the take, possession, and landing of squid.

(f) A commercial squid light boat owner's permit shall be issued to a person who is the owner of record of a vessel that is registered with the department pursuant to Section 7881. For purposes of this subdivision, an owner includes any person who has a lease-purchase agreement for the purchase of a vessel.

SEC. 3. Section 8429.7 of the Fish and Game Code is amended to read:

8429.7. This article shall become inoperative on April 1, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

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 718

An act to add Section 48980.3 to, and to add Article 4 (commencing with Section 17608) to Chapter 5 of Part 10.5 of, the Education Code, and to add Article 17 (commencing with Section 13180) to Chapter 2 of Division 7 of the Food and Agricultural Code, relating to school safety.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Article 4 (commencing with Section 17608) is added to Chapter 5 of Part 10.5 of the Education Code, to read:

Article 4. Healthy Schools Act of 2000

17608. This article, Article 17 (commencing with Section 13180) of Chapter 2 of Division 7 of the Food and Agricultural Code, and Article 2 (commencing with Section 105500) of Chapter 76 of Division 103 of the Health and Safety Code, shall be known and cited as the Healthy Schools Act of 2000.

17609. The definitions set forth in this section govern the construction of this article unless the context clearly requires otherwise:

(a) ''Antimicrobial'' means those pesticides defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136(mm)).

(b) ''Crack and crevice treatment'' means the application of small quantities of a pesticide consistent with labeling instructions in a building into openings such as those commonly found at expansion joints, between levels of construction and between equipment and floors.

(c) ''Emergency conditions'' means any circumstances in which the school district designee deems that the immediate use of a pesticide is necessary to protect the health and safety of pupils, staff, or other persons, or the schoolsite.

(d) ''School district designee'' means the individual identified by the school district to carry out the requirements of this article at the schoolsite.

(e) '' Schoolsite'' means any facility used for public day care, kindergarten, elementary, or secondary school purposes. The term includes the buildings or structures, playgrounds, athletic fields, school vehicles, or any other area of school property visited or used by pupils. ''Schoolsite'' does not include any postsecondary educational facility attended by secondary pupils or private day care or school facilities.

17610. It is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and that the state, in order to reduce children's exposure to toxic pesticides, shall take the necessary steps, pursuant to Article 17 (commencing with Section 13180) of Chapter 2 of Division 7 of the Food and Agricultural Code, to facilitate the adoption of effective least toxic pest management practices at schoolsites. It is the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of pesticide at a schoolsite.

17610.5. Sections 17611 and 17612 shall not apply to a pesticide product deployed in the form of a self-contained bait or trap, to gel or paste deployed as a crack and crevice treatment, to any pesticide exempted from regulation by the United States Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 25 (b)), or to antimicrobial pesticides, including sanitizers and disinfectants.

17611. Each schoolsite shall maintain records of all pesticide use at the schoolsite for a period of four years, and shall make this information available to the public, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). A schoolsite may meet the requirements of this section by retaining a copy of the warning sign

posted for each application required pursuant to Section 17612, and recording on that copy the amount of the pesticide used.

17612. (a) The school district designee shall annually provide to all staff and parents or guardians of pupils enrolled at a schoolsite a written notification of the name of all pesticide products expected to be applied at the school facility during the upcoming year. The notification shall identify the active ingredient or ingredients in each pesticide product. The notice shall also contain the Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Section 13184 of the Food and Agricultural Code and may contain other information deemed necessary by the school district designee. No other written notification of pesticide applications shall be required by this act except as follows:

(1) In the written notification provided pursuant to this subdivision, the school district designee shall provide the opportunity for recipients to register with the school district if they wish to receive notification of individual pesticide applications at the school facility. Persons who register for such notification shall be notified of individual pesticide applications at least 72 hours prior to the application. The notice shall include the product name, the active ingredient or ingredients in the product, and the intended date of application.

(2) If a pesticide product not included in the annual notification is subsequently intended for use at the schoolsite, the school district designee shall, consistent with this subdivision and at least 72 hours prior to application, provide written notification of its intended use.

(b) The school designee shall make every effort to meet the requirements of this section in the least costly manner. Annual notification to parents and guardians shall be provided pursuant to Section 48980.3. Any other notification shall, to the extent feasible and consistent with the act adding this article, be included as part of any other written communication provided to individual parents or guardians. Nothing in this section shall require the school district designee to issue the notice through first-class mail, unless he or she determines that no other method is feasible.

(c) Pest control measures taken during an emergency condition as defined in Section 17609 shall not be subject to the requirements of paragraphs (1) and (2) of subdivision (a). However, the school district designee shall make every effort to provide the required notification for an application of a pesticide under emergency conditions.

(d) The school district designee shall post each area of the schoolsite where pesticides will be applied with a warning sign. The warning sign shall prominently display the term ''Warning/Pesticide Treated Area'' and shall include the product name, manufacturer's name, the United States Environmental Protection Agency's product registration number,

intended date and areas of application, and reason for the pesticide application. The warning sign shall be visible to all persons entering the treated area and shall be posted 24 hours prior to the application and remain posted until 72 hours after the application. In case of a pest control emergency, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application.

(e) Subdivisions (a) and (d) shall not apply to schools operated by the California Youth Authority. The school administrator of a school operated by the California Youth Authority shall notify the chief medical officer of that facility at least 72 hours prior to application of pesticides. The chief medical officer shall take any steps necessary to protect the health of pupils in that facility.

(f) This section and Section 17611 shall not apply to activities undertaken at a school by participants in the state program of agricultural vocational education, pursuant to Article 7 (commencing with Section 52450) of Chapter 9 of Part 28, if the activities are necessary to meet the curriculum requirements prescribed in Section 52454. Nothing in this subdivision relieves schools participating in the state program of agricultural vocational education of any duties pursuant to this section for activities that are not directly related to the curriculum requirements of Section 52454.

17613. Section 17612 shall not apply to any agency signatory to a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code.

SEC. 2. Section 48980.3 is added to the Education Code, to read:

48980.3. The notification required pursuant to Section 48980 shall include information regarding pesticide products as specified in subdivision (a) of Section 17612.

SEC. 3. Article 17 (commencing with Section 13180) is added to Chapter 2 of Division 7 of the Food and Agricultural Code, to read:

Article 17. Healthy Schools Act of 2000

13180. This article, Article 4 (commencing with Section 17608) of Chapter 5 of Part 10.5 of the Education Code, and Article 2 (commencing with Section 105500) of Chapter 7 of Division 103 of the Health and Safety Code, shall be known and may be cited as the Healthy Schools Act of 2000.

13181. Notwithstanding any other provision of law, for purposes of this article, ''integrated pest management'' means a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest

development, improving sanitation, and employing mechanical and physical controls. Pesticides that pose the least possible hazard and are effective in a manner that minimizes risks to people, property, and the environment, are used only after careful monitoring indicates they are needed according to preestablished guidelines and treatment thresholds. This definition shall apply only to integrated pest management at school facilities.

13182. It is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites and that the state, in order to reduce children's exposure to toxic pesticides, shall take the necessary steps, pursuant to this article, to facilitate the adoption of effective least toxic pest management practices at schoolsites. It is the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of pesticide at a schoolsite.

13183. The Department of Pesticide Regulation shall, by July 1, 2001, promote and facilitate the voluntary adoption of integrated pest management programs for all school districts that voluntarily choose to do so. For these school districts, the department shall do all of the following:

(a) Establish an integrated pest management program for school districts consistent with Section 13181. In establishing the program, the department shall:

(1) Develop criteria for identifying least-hazardous pest control practices and encourage their adoption as part of an integrated pest management program at each schoolsite.

(2) Develop a model program guidebook that prescribes essential program elements for a school district that has adopted a least-hazardous integrated pest management program. At a minimum, this guidebook shall include guidance on all of the following:

(A) Adopting an IPM policy.

(B) Selecting and training an IPM coordinator.

(C) Identifying and monitoring pest populations and damage.

(D) Establishing a community-based school district advisory committee.

(E) Developing a pest management plan for making least-hazardous pest control choices.

(F) Contracting for integrated pest management services.

(G) Training and licensing opportunities.

(H) Establishing a community-based right-to-know standard for notification and posting of pesticide applications.

(I) Recordkeeping and program review.

(b) Make the model program guidebook available to school districts and establish a process for systematically updating the guidebook and supporting documentation.

13184. (a) In implementing Section 13183, the department shall establish and maintain an Internet website as a comprehensive directory of resources describing and promoting least-hazardous practices at schoolsites. The website shall also make available an electronic copy of the model program guidebook, its updates, and supporting documentation. The department shall also establish and maintain on its website an easily identified link that provides the public with all appropriate information regarding the public health and environmental impacts of pesticide active ingredients and ways to reduce the use of pesticides at school facilities.

(b) It is the intent of the Legislature that the state assist school districts to ensure that compliance with Section 17612 of the Education Code is simple and inexpensive. The department shall include in its website Internet-based links that allow schools to properly identify and list the active ingredients of pesticide products they expect to be applied during the upcoming year. Use of these links by schools is not mandatory but shall be made available to all schools at no cost. The department shall ensure that adequate resources are available to respond to inquiries from school facilities or districts regarding the use of integrated pest management practices.

13185. (a) The department shall establish an integrated pest management training program in order to facilitate the adoption of a model IPM program and least-hazardous pest control practices by school districts. In establishing the IPM training program, the department shall do all of the following:

(1) Adopt a ''train-the-trainer'' approach, whenever feasible, to rapidly and broadly disseminate program information.

(2) Develop curricula and promote ongoing training efforts in cooperation with the University of California and the California State University.

(3) Prioritize outreach on a regional basis first and then to school districts.

(b) Nothing in this article shall preclude a school district from adopting stricter pesticide use policies.

13186. (a) The Legislature finds and declares that the Department of Pesticide Regulation, pursuant to Section 12979 of the Food and Agricultural Code and Sections 6624 and 6627 of Title 3 of the California Code of Regulations, requires persons engaged for hire in the business of pest control to maintain records of pesticide use and report a summary of that pesticide use to the county agricultural commissioner or director. The Legislature further finds and declares that it is in the

interest of the state, in implementing a school integrated pest management program pursuant to this article, to collect specified information on the use of pesticides at school facilities.

(b) The Department of Pesticide Regulation shall prepare a school pesticide use form to be used by licensed and certified pest control operators when they apply any pesticides at a schoolsite. The form shall include, for each application at a schoolsite, the name and address of the schoolsite, date and location of application, pesticide product name, and the quantity of pesticide used. Nothing in this section shall change any existing applicable pesticide use reporting requirements.

(c) On and after January 1, 2002, persons required to submit pesticide use records to the county agricultural commissioner or director shall complete and submit to the director the school pesticide use forms established pursuant to this section. The forms shall be submitted annually and may be submitted more often at the discretion of the pest control operator maintaining the forms.

13187. Section 13186 shall not apply to any agency signatory to a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code.

13188. The Director of Pesticide Regulation may adopt regulations to implement this article.

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

CHAPTER 719

An act relating to the Humboldt Bay Harbor District, and making an appropriation therefor.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

On this date I have signed Assembly Bill No. 2016 with a reduction.

This bill would appropriate funding to the Humboldt Bay Harbor district to be used for navigation improvement and safety projects. Normally I oppose such local expenditures, however, the northern region of the state is experiencing unique economic difficulties. This bill would provide one-time economic relief for one of the major regions of the state

with an economy that is not thriving. Therefore, I am signing this measure and reducing the appropriation to $580,000.

GRAY DAVIS, Governor

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

SECTION 1. The sum of one million five hundred eighty thousand dollars ($1,580,000) is hereby appropriated from the General Fund to the State Lands Commission for allocation in the 2000–01 fiscal year to the Humboldt Bay Harbor District for the purpose of meeting local matching share requirements for federal navigation projects.

CHAPTER 720

An act to amend Sections 10004 and 10004.5 of, and to add Section 10004.6 to, the Water Code, relating to water.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) A long-term, reliable supply of water is essential to protect and enhance California's natural resources and economic climate.

(b) While the Department of Water Resources has projected that Californians will experience chronic water shortages in the future, the Legislature has heard credible testimony from a number of different interest groups calling into question the accuracy of those estimates.

(c) Without credible and accurate estimates of water supply needs, it is impossible to ensure that water programs, policies, and investments are appropriate to meet all residential, commercial, industrial, agricultural, and environmental needs.

(d) CALFED's recent hearings on its draft environmental documents showed that there are widely disparate views on the role additional surface water storage should play in meeting the state's future water needs. Some argue that the state's water needs can all be met through water conservation, reuse, and other nonstructural methods. Others argue that to protect current and future uses of water, additional surface storage is essential.

(e) To reconcile these views, and to ensure the state makes appropriate investments in water programs, policies, and facilities, there needs to be a credible and objective assessment of the state's future water supply needs.

SEC. 2. Section 10004 of the Water Code is amended to read:

10004. (a) The plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state which is set forth and described in Bulletin No. 1 of the State Water Resources Board entitled ''Water Resources of California,'' Bulletin No. 2 of the State Water Resources Board entitled, ''Water Utilization and Requirements of California,'' and Bulletin No. 3 of the department entitled, ''The California Water Plan,'' with any necessary amendments, supplements, and additions to the plan, shall be known as ''The California Water Plan.''

(b) (1) The department shall update The California Water Plan on or before December 31, 2003, and every five years thereafter. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department's conclusions and recommendations, to the Legislature in the session in which the updated plan is issued.

(2) The department shall establish an advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, to assist the department in the updating of The California Water Plan. The department shall consult with the advisory committee in carrying out this section. The department shall provide written notice of meetings of the advisory committee to any interested person or entity that request the notice. The meetings shall be open to the public.

(3) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.

SEC. 3. Section 10004.5 of the Water Code is amended to read:

10004.5. As part of the requirement of the department to update The California Water Plan pursuant to subdivision (b) of Section 10004, the department shall include in the plan a discussion of various strategies, including, but not limited to, those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state. The department shall also include a discussion of the potential for alternative water pricing policies to change current and projected uses. The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy and an identification of all federal and

state permits, approvals, or entitlements that are anticipated to be required in order to implement the various components of the strategy.

SEC. 4. Section 10004.6 is added to the Water Code, to read:

10004.6. (a) As part of updating The California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.

(b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c) On or before January 1, 2002, and one year prior to issuing each successive update to The California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the department shall release, at a minimum, assumptions and other estimates relating to all of the following:

(1) Basin hydrology, including annual rainfall, estimated unimpaired stream flow, depletions, and consumptive uses.

(2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.

(3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.

(4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.

(5) Current and projected population.

(6) Current and projected water use for all of the following:

(A) Interior uses in a single-family dwelling.

(B) Exterior uses in a single-family dwelling.

(C) All uses in a multifamily dwelling.

(D) Commercial uses.

(E) Industrial uses.

(F) Parks and open spaces.

(7) Evapotranspiration rates for major crop types, including estimates of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.

(8) Current and projected adoption of urban and agricultural conservation practices.

(9) Current and projected supplies of water provided by water recycling and reuse.

(d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).

(e) Nothing in this section requires or prohibits the department from updating any data necessary to update The California Water Plan pursuant to subdivision (b) of Section 10004.

CHAPTER 721

An act to amend, repeal, and add Section 8670.32 of the Government Code, relating to oil spills, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 8670.32 of the Government Code, as amended by Section 1 of Chapter 687 of the Statutes of 1999, is amended to read:

8670.32. (a) The following definitions govern the construction of this section:

(1) ''Nontank vessel'' means a vessel, of 300 gross tons or greater, other than a tanker or barge, as those terms are defined in Section 8670.3.

(2) ''Reasonable worst case spill'' means, for the purposes of preparing contingency plans pursuant to subdivisions (c) to (h), inclusive, a spill of the total volume of the largest fuel tank on the nontank vessel.

(3) ''Qualified individual'' means a shore-based representative of a covered nontank vessel owner or operator that, at a minimum, shall be fluent in English, located in the continental United States, be available on a 24-hour basis, and have full written authority to implement the covered nontank vessel's contingency plan.

(b) A nontank vessel of 300 gross registered tons or greater shall not operate in the marine waters of the state unless the owner or operator has an oil spill contingency plan prepared, submitted, and approved in accordance with this section.

(c) On or before September 1, 1999, each owner or operator of a nontank vessel of 300 gross registered tons or greater shall prepare an oil

spill contingency plan for that vessel, and submit the plan to the administrator for review and approval. The plan may be specific to an individual vessel or may be developed using either of the following:

(1) A fleet plan submitted by an owner or operator that has a number of vessels that transit the same or substantially the same routes in marine waters of the state. This fleet plan shall contain all prevention and response elements required pursuant to this section. A separate appendix for each vessel shall be included as an attachment to the plan, and shall include both of the following:

(A) Specification of the type and total amount of fuel carried.

(B) Specification of the capacity of the largest fuel tank.

(2) The owner or operator provides evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation, or other nonprofit maritime association, to provide a statewide spill response plan consistent with the requirements of this section, pursuant to its applicable fee structure.

(d) The geographic regions covered by an individual plan shall be defined in regulations adopted by the administrator.

(e) In addition to all other contingency plan requirements in this section, the plan shall contain, at a minimum, a procedure for management of the resources to be used in response to an oil spill.

(f) The vessel owner or operator shall submit any information, or address any plan element that is required by this section but not addressed by a statewide spill response plan.

(g) The administrator shall adopt regulations and guidelines to implement the requirements of this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources and shall include provisions for public review and comment on submitted contingency plans prior to approval. The regulations shall ensure that a contingency plan meets all of the following requirements:

(1) Be consistent with the protection and response strategies as well as other elements addressed in the state contingency plan and the appropriate area contingency plan, and is not in conflict with the national contingency plan.

(2) Be a written document, reviewed for feasibility and approved by the owner or operator, or a person designated by the owner or operator.

(3) Establish a specific chain of command and specify the overall responsibilities of crew, supervisorial, contract, and volunteer personnel.

(4) Detail procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened discharge, or discharge.

(5) Specify lines of communication between the vessel and the on-scene commanders, response teams, and local, state, and federal response organizations.

(6) Provide for response planning, including coordination with employees, outside contractors, volunteers, and local, state, and federal agencies.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone number, and facsimile number of an agent for service of process, located in the state and designated to receive legal documents on behalf of the planholder.

(9) Demonstrate that shipboard personnel have knowledge of the notification requirements and other provisions of the contingency plan.

(10) Provide for timely and effective oil spill response. This may be provided directly or through membership in, or contract with, a private or public cooperative or other organization and shall be consistent with the state contingency plan and the appropriate area contingency plan, and not in conflict with the national contingency plan.

(11) Provide evidence that the vessel is in compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(h) Each contingency plan shall be submitted and resubmitted to the administrator for review and approval as specified in Section 8670.31.

(i) (1) A nontank vessel, required to have a contingency plan pursuant to this section, shall not enter marine waters of the state unless the vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the vessel has obtained a certificate of financial responsibility from the administrator for the vessel. The administrator may charge a vessel owner or operator a reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(2) Notwithstanding paragraph (1), the administrator may establish a lower standard of financial responsibility for nontank vessels that have a carrying capacity of 6500 barrels of oil or less, or a carrying capacity of 7,500 barrels of oil or less for nontank vessels owned and operated by California or a federal agency. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard

that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(j) A nonprofit maritime association that provides spill response services pursuant to a spill response plan approved by the administrator, and its officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide spill response plan.

(2) A nonprofit maritime association providing spill response plan services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of a contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in subdivision (q) of Section 8670.3 of this code and in subdivision (p) of Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in subdivision (q) of Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in subdivision (c) of Section 8670.56.6.

(k) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with the nonprofit maritime association to provide spill response services for the association spill response plan.

(*l*) (1) Except as provided in paragraph (2), any nontank vessel that is subject to subdivision (b) or (i), and that enters the waters of the state in violation of subdivision (b) or (i), is subject to an administrative civil penalty of up to one hundred thousand dollars ($100,000). The administrator shall assess the civil penalty against the owner or operator of the vessel pursuant to Section 8670.68. Each day the owner or

operator of a nontank vessel is in violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(m) (1) Except as provided in paragraph (2), any owner or operator of a nontank vessel that is subject to subdivision (b) or (i) and who knowingly and intentionally enters the waters of the state in violation of subdivision (b) or (i), is guilty of a misdemeanor punishable by up to one year of imprisonment in the county jail, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine. Each day the owner or operator of the nontank vessel is in knowing and intentional violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

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

SEC. 2. Section 8670.32 is added to the Government Code, to read:

8670.32. (a) The following definitions govern the construction of this section:

(1) ''Nontank vessel'' means a vessel, of 300 gross tons or greater, other than a tanker or barge, as those terms are defined in Section 8670.3.

(2) ''Reasonable worst case spill'' means, for the purposes of preparing contingency plans pursuant to subdivisions (c) to (h), inclusive, a spill of the total volume of the largest fuel tank on the nontank vessel.

(3) ''Qualified individual'' means a shore-based representative of a covered nontank vessel owner or operator that, at a minimum, shall be fluent in English, located in the continental United States, be available on a 24-hour basis, and have full written authority to implement the covered nontank vessel's contingency plan.

(b) A nontank vessel of 300 gross registered tons or greater shall not operate in the marine waters of the state unless the owner or operator has

an oil spill contingency plan prepared, submitted, and approved in accordance with this section.

(c) On or before September 1, 1999, each owner or operator of a nontank vessel of 300 gross registered tons or greater shall prepare an oil spill contingency plan for that vessel, and submit the plan to the administrator for review and approval. The plan may be specific to an individual vessel or may be developed using either of the following:

(1) A fleet plan submitted by an owner or operator that has a number of vessels that transit the same or substantially the same routes in marine waters of the state. This fleet plan shall contain all prevention and response elements required pursuant to this section. A separate appendix for each vessel shall be included as an attachment to the plan, and shall include both of the following:

(A) Specification of the type and total amount of fuel carried.

(B) Specification of the capacity of the largest fuel tank.

(2) The owner or operator provides evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation, or other nonprofit maritime association, to provide a statewide spill response plan consistent with the requirements of this section, pursuant to its applicable fee structure.

(d) The geographic regions covered by an individual plan shall be defined in regulations adopted by the administrator.

(e) In addition to all other contingency plan requirements in this section, the plan shall contain, at a minimum, a procedure for management of the resources to be used in response to an oil spill.

(f) The vessel owner or operator shall submit any information, or address any plan element that is required by this section but not addressed by a statewide spill response plan.

(g) The administrator shall adopt regulations and guidelines to implement the requirements of this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources and shall include provisions for public review and comment on submitted contingency plans prior to approval. The regulations shall ensure that a contingency plan meets all of the following requirements:

(1) Be consistent with the protection and response strategies as well as other elements addressed in the state contingency plan and the appropriate area contingency plan, and is not in conflict with the national contingency plan.

(2) Be a written document, reviewed for feasibility and approved by the owner or operator, or a person designated by the owner or operator.

(3) Establish a specific chain of command and specify the overall responsibilities of crew, supervisorial, contract, and volunteer personnel.

(4) Detail procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened discharge, or discharge.

(5) Specify lines of communication between the vessel and the on-scene commanders, response teams, and local, state, and federal response organizations.

(6) Provide for response planning, including coordination with employees, outside contractors, volunteers, and local, state, and federal agencies.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone number, and facsimile number of an agent for service of process, located in the state and designated to receive legal documents on behalf of the planholder.

(9) Demonstrate that shipboard personnel have knowledge of the notification requirements and other provisions of the contingency plan.

(10) Provide for timely and effective oil spill response. This may be provided directly or through membership in, or contract with, a private or public cooperative or other organization and shall be consistent with the state contingency plan and the appropriate area contingency plan, and not in conflict with the national contingency plan.

(11) Provide evidence that the vessel is in compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(h) Each contingency plan shall be submitted and resubmitted to the administrator for review and approval as specified in Section 8670.31.

(i) A nontank vessel, required to have a contingency plan pursuant to this section, shall not enter marine waters of the state unless the vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the vessel has obtained a certificate of financial responsibility from the administrator for the vessel. The administrator may charge a vessel owner or operator a reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(j) A nonprofit maritime association that provides spill response services pursuant to a spill response plan approved by the administrator, and its officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide spill response plan.

(2) A nonprofit maritime association providing spill response plan services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of a contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in subdivision (q) of Section 8670.3 of this code and in subdivision (p) of Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in subdivision (q) of Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in subdivision (c) of Section 8670.56.6.

(k) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with the nonprofit maritime association to provide spill response services for the association spill response plan.

(*l*) (1) Except as provided in paragraph (2), any nontank vessel that is subject to subdivision (b) or (i), and that enters the waters of the state in violation of subdivision (b) or (i), is subject to an administrative civil penalty of up to one hundred thousand dollars ($100,000). The administrator shall assess the civil penalty against the owner or operator of the vessel pursuant to Section 8670.68. Each day the owner or operator of a nontank vessel is in violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(m) (1) Except as provided in paragraph (2), any owner or operator of a nontank vessel that is subject to subdivision (b) or (i) and who knowingly and intentionally enters the waters of the state in violation of subdivision (b) or (i), is guilty of a misdemeanor punishable by up to one year of imprisonment in the county jail, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine. Each day the owner or operator of the nontank vessel is in knowing and intentional violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(n) This section shall become operative on January 1, 2003.

SEC. 2.5. Section 8670.32 of the Government Code, as added by Section 2 of Chapter 687 of the Statutes of 1999, is repealed.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the administrator for oil spill response may authorize a lower standard of financial responsibility for nontank vessels as soon as possible, as authorized for small barges pursuant to subdivision (a) of Section 8670.37.53 of the Government Code, it is necessary for this act to take effect immediately.

CHAPTER 722

An act to add Section 55339 to the Water Code, relating to water.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 55339 is added to the Water Code, to read:

55339. A district may contract with any state agency to finance any district improvement if the term of the contract does not exceed 30 years.

A contract between the district and a state agency that creates an indebtedness or liability that exceeds the district's annual revenue shall be repaid with revenue derived from the imposition of standby charges pursuant to Section 55501.5.

CHAPTER 723

An act to add Section 867.5 to the Code of Civil Procedure, to amend Sections 6586.5 and 12332 of, and to add Sections 6586.7, 6599, and 6599.2 to, the Government Code, relating to joint powers agreements.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The Legislature hereby finds and declares that the municipal finance market in California is a matter of great public importance. Thus, it is of great public importance to ensure that the California municipal bond market remains a viable means of financing needed public improvements for all levels of government in the state. The Legislature enacts this act with the intent to protect the integrity of that market by prohibiting certain risky practices in the issuance of bonds. The Legislature further enacts this act with the intent to protect the public's interest, including protecting the public from the potential or actual confusion or deception in the issuance and purchase of those bonds.

SEC. 2. Section 867.5 is added to the Code of Civil Procedure to read:

867.5. (a) In the event that an action is brought by a public agency pursuant to this chapter, and that public agency later dismisses the action after any party has answered, then, notwithstanding Section 863, the party that answered may file an action pursuant to this chapter within 30 days after the public agency's dismissal was filed by the court.

(b) Subdivision (a) is not applicable to a case in which a public agency has by formal act rescinded the action on the matter subject to validation.

SEC. 3. Section 6586.5 of the Government Code is amended to read:

6586.5. (a) Notwithstanding Section 6587, an authority, or any entity acting on behalf of or for the benefit of an authority, may not authorize bonds to construct, acquire, or finance a public capital improvement except pursuant to Article 1 (commencing with Section 6500), unless all of the following conditions are satisfied with respect to each capital improvement to be constructed, acquired, or financed:

(1) The authority reasonably expects that the public capital improvement is to be located within the geographic boundaries of one or more local agencies of the authority that is not itself an authority.

(2) A local agency that is not itself an authority, within whose boundaries the public capital improvement is to be located, has approved the financing of the public capital improvement and made a finding of significant public benefit in accordance with the criteria specified in Section 6586 after a public hearing held by that local agency within each county or city and county where the public capital improvement is to be located after notice of the hearing is published once at least five days prior to the hearing in a newspaper of general circulation in each affected county or city and county.

(3) A notice is sent by certified mail at least five business days prior to the hearing held pursuant to paragraph (2) to the Attorney General and to the California Debt and Investment Advisory Commission. This notice shall contain all of the following information:

(A) The date, time, and exact location of the hearing.

(B) The name and telephone number of the contact person.

(C) The name of the joint powers authority.

(D) The names of all members of the joint powers authority.

(E) The name, address, and telephone number of the bond counsel.

(F) The name, address, and telephone number of the underwriter.

(G) The name, address, and telephone number of the financial adviser, if any.

(H) The name, address, and telephone number of the legal counsel of the authority.

(I) The prospective location of the public capital improvement described by its street address, including city, county, and ZIP Code, or, if none, by a general description designed to inform readers of its specific location, including both the county and the ZIP Code that covers the specific location.

(J) A general functional description of the type and use of the public capital improvement to be financed.

(K) The maximum aggregate face amount of obligations to be issued with respect to the public capital improvement.

(b) Paragraph (3) of subdivision (a) does not apply to bonds:

(1) Issued pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(2) To finance transportation facilities and vehicles.

(3) To finance a facility that is located within the boundaries of an authority, provided that the authority that issues those bonds consists of any of the following:

(A) Local agencies with overlapping boundaries.

(B) A county and a local agency or local agencies located entirely within that county.

(C) A city and a local agency or local agencies located entirely within that city.

(4) To finance a facility for which an authority has received an allocation from the California Debt Limit Allocation Committee.

(5) Of an authority that consists of no less than 100 local agencies and the agreement that established that authority requires the governing body of the local agency that is a member of the authority in whose jurisdiction the facility will be located to approve the facility and the issuance of the bonds.

(c) This section and Section 6586.7 do not apply to bonds issued for any of the following purposes:

(1) To finance the undergrounding of utility and communication lines.

(2) To finance, consistent with the provisions of this chapter, facilities for the generation or transmission of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources.

(3) To finance facilities for the production, storage, transmission, or treatment of water, recycled water, or wastewater.

(4) To finance public school facilities.

(5) To finance public highways located within the jurisdiction of an authority that is authorized to exercise the powers specified in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code, provided that the authority conducts the noticed public hearing and makes the finding of significant public benefit in accordance with this section.

(d) For purposes of this section, a local agency does not include a private entity.

SEC. 4. Section 6586.7 is added to the Government Code, to read:

6586.7. (a) A copy of the resolution adopted by an authority authorizing bonds or any issuance of bonds, or accepting the benefit of any bonds or proceeds of bonds, except bonds issued or authorized pursuant to Article 1 (commencing with Section 6500), or bonds issued for the purposes specified in subdivision (c) of Section 6586.5, shall be sent by certified mail to the Attorney General and the California Debt and Investment Advisory Commission not later than five days after adoption by the authority.

(b) This section does not apply to bonds:

(1) Specified in subdivision (c) of Section 6586.5.

(2) Issued pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(3) To finance transportation facilities and vehicles.

(4) To finance a facility that is located within the boundaries of an authority, provided that the authority that issues those bonds consists of any of the following:

(A) Local agencies with overlapping boundaries.

(B) A county and a local agency or local agencies located entirely within that county.

(C) A city and a local agency or local agencies located entirely within that city.

(5) To finance a facility for which an authority has received an allocation from the California Debt Limit Allocation Committee.

(6) Of an authority that consists of no less than 250 local agencies and the agreement that established that authority requires the governing body of the local agency that is a member of the authority in whose jurisdiction the facility will be located to approve the facility and the issuance of the bonds.

SEC. 5. Section 6599 is added to the Government Code, to read:

6599. (a) In an action filed pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any matter of an authority governed by this article, the authority and any interested person shall serve the Attorney General and the Treasurer with a copy of the complaint filed by the respective party by the first day of the publication of summons as required by Section 861 of the Code of Civil Procedure. A court may render no judgment in the matter or grant other permanent relief to any party except on proof of service of the Attorney General and the Treasurer as required by this section.

(b) The Attorney General and the Treasurer are each interested persons pursuant to an action filed pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any authorizing bonds or the issuance of bonds.

(c) Any authority that dismisses a validation action by formal act and withdraws the resolution may not issue bonds to construct, acquire, or finance a public capital improvement, except pursuant to Article 1 (commencing with Section 6500), unless the authority thereafter reauthorizes the issuance of the bonds and thereafter, if applicable, complies with Sections 6586.5 and 6586.7.

SEC. 6. Section 6599.2 is added to the Government Code, to read:

6599.2. (a) Notwithstanding Sections 863 and 869 of the Code of Civil Procedure, the Attorney General or the Treasurer may jointly or separately file an action pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure at any time up to 55 days after notice required by Section 6586.7 is mailed by

certified mail to the Sacramento offices of both the Attorney General and the Treasurer.

SEC. 7. Section 12332 of the Government Code is amended to read:

12332. The Treasurer is designated as an elected representative of the state to approve the issuance of bonds, notes, or other evidences of indebtedness, issued by or on behalf of the state, to the extent this approval is required by federal tax law. In the event the Treasurer is unavailable and the Treasurer's office notifies the issuer of this fact, at the request of the Governor or his or her designee, the Attorney General is designated as an elected representative of the state who may approve the issuance upon request by the issuer, to the extent this approval is required by federal tax law.

CHAPTER 724

An act to add Section 6586.7 to the Government Code, relating to joint powers agreements.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 6586.7 is added to the Government Code, to read:

6586.7. (a) A copy of the resolution adopted by an authority authorizing bonds or any issuance of bonds, or accepting the benefit of any bonds or proceeds of bonds, except bonds issued or authorized pursuant to Article 1 (commencing with Section 6500), or bonds issued for the purposes specified in subdivision (c) of Section 6586.5, shall be sent by certified mail to the Attorney General and the California Debt and Investment Advisory Commission not later than five days after adoption by the authority.

(b) This section does not apply to bonds:

(1) Specified in subdivision (c) of Section 6586.5.

(2) Issued pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(3) To finance transportation facilities and vehicles.

(4) To finance a facility that is located within the boundaries of an authority, provided that the authority that issues those bonds consists of any of the following:

(A) Local agencies with overlapping boundaries.

(B) A county and a local agency or local agencies located entirely within that county.

(C) A city and a local agency or local agencies located entirely within that city.

(5) To finance a facility for which an authority has received an allocation from the California Debt Limit Allocation Committee.

(6) Of an authority that consists of no less than 100 local agencies and the agreement that established that authority requires the governing body of the local agency that is a member of the authority in whose jurisdiction the facility will be located to approve the facility and the issuance of the bonds.

SEC. 2. This act shall become operative only if AB 2300 of the 1999–2000 Regular Session of the Legislature is enacted and becomes operative.

CHAPTER 725

An act to amend Section 17072.13 of the Education Code, and to add Section 25358.6.1 to the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 17072.13 of the Education Code is amended to read:

17072.13. In addition to the amounts provided pursuant to Sections 17072.10 and 17072.12, the board may provide funding as follows:

(a) For 50 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for 50 percent of the other response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial action in connection with hazardous substances at that site. Except as provided in subdivision (b), the funding provided pursuant to this section may not exceed 50 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(b) The board may provide funding for up to 100 percent of the cost of the evaluation of hazardous materials at a site to be acquired by a school district eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10) and for up to 100 percent

of the other response costs for the site. The funding provided pursuant to this subdivision may not exceed 100 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the response action is completed.

(c) A school district with a site that meets the environmental hardship criteria set forth in paragraph (1) may apply to the board for site acquisition funding for that site prior to having construction plans for that site approved by the Division of the State Architect and State Department of Education. The site acquisition funding is subject to the funding limits provided in subdivisions (a) or (b) and may not result in an increase in the funding limits available to a school district under this section.

(1) A project is eligible for environmental hardship site acquisition funding if both of the following apply:

(A) The remedial action plan for the site approved by the Department of Toxic Substances Control, pursuant to Section 17213, is estimated by the Department of Toxic Substances Control to take six months or more to complete.

(B) The State Department of Education determines that the site is the best available alternative site.

(2) The initial site-specific reservation pursuant to this subdivision shall be for a period of one year. Extension may be approved in one-year intervals upon demonstration to the State Allocation Board of progress toward acquisition. In the event there is not demonstrable progress, the State Allocation Board shall have the option of rescinding the reservation.

(3) Environmental hardship site acquisition funds approved by the State Allocation Board can be used only for the site identified in the remedial action plan approved by the Department of Toxic Substances Control.

(4) The date that the State Allocation Board approves the environmental hardship site acquisition funding will become the State Allocation Board approval date for the project's construction funding for that site.

(5) A school district may apply to the State Allocation Board for construction funding for the environmental hardship site when the project has received final Division of the State Architect plan approval and final State Department of Education site and plan approval.

(d) The cost incurred by the school districts when complying with any requirement identified in this section are allowable costs for purposes of an applicant under this chapter and may be reimbursed in accordance with Section 17072.12. The site acquisition funding is subject to the funding limits provided in subdivision (a) or (b) and may not result in

an increase in the funding limits available to a school district under this section.

(e) The State Allocation Board shall develop regulations that allow school districts with financial hardship site acquisition funding prior to ownership of the site or evidence that the site is in escrow.

SEC. 2. Section 25358.6.1 is added to the Health and Safety Code, to read:

25358.6.1. (a) For purposes of this section, the following definitions shall apply:

(1) ''Engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services'' includes professional services of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(2) ''Firm'' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(3) ''Prequalified list'' means a list of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms that possess the qualifications established by the department to perform specific types of engineering, architectural, environmental, land surveying services, with each firm ranked in order of its qualifications and costs.

(b) Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this section, for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services pursuant to this chapter or Chapter 6.5 (commencing with Section 25100), if the contract is individually in an amount equal to, or less than, one million dollars ($1,000,000).

(c) The department may establish prequalified lists of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms in accordance with the following process:

(1) For each type of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services work for which the department elects to use this section for advertising and awarding contracts, the department shall request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide

through the California State Contracts Register and publications, internet websites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services that the department anticipates may be awarded during the period covered by the announcement.

(2) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(3) The department shall evaluate the statements of qualifications received pursuant to paragraph (1) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(4) The department shall maintain prequalified lists of civil engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms ranked pursuant to paragraph (3) on an ongoing basis, except that no firm may remain on a list developed pursuant to paragraph (3) based on a single qualification statement for more than three years. The department shall include in each prequalified list adopted pursuant to paragraph (3) no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list developed pursuant to paragraph (3), the

department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

(5) During the term of the a prequalified list developed pursuant to paragraph (3), as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to subdivision (d), the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(6) The department may enter into a contract for the services with a firm identified pursuant to paragraph (5), if the contract is for a total price that the department determines is fair and reasonable to the department and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(7) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to paragraph (6), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract. If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list. The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(8) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

(d) The department may adopt guidelines or regulations as necessary, and consistent with this section, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters

addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this section, or any other matter that is appropriate for implementation of this section,

(e) Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 is exempt from this section.

(f) This section does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Division 5 of Title 2 of the Government Code.

CHAPTER 726

An act to amend Section 25250.4 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter until it has been shown to meet the requirements of subdivision (b) of Section 25250.1 or is excluded from regulation as a hazardous waste pursuant to Section 25143.2.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes of this section:

(1) ''Oil-filled electrical equipment'' includes, but is not limited to, transformers, circuit breakers, and capacitators.

(2) ''Restricted access electrical equipment area'' means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), ''filtered'' means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment, mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

SEC. 1.5. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(1) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(2) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes or this section:

(1) ''Oil-filled electrical equipment'' includes, but is not limited to, transformers, circuit breakers, and capacitators.

(2) ''Restricted access electrical equipment area'' means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), ''filtered'' means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 25250.4 of the Health and Safety Code proposed by both this bill and SB 1924. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 2001, (2) each bill amends Section 25250.4 of the Health and Safety Code, and (3) this bill is enacted after SB 1924, in which case Section 1 of this bill shall not become operative.

CHAPTER 727

An act to amend Sections 25299.36, 25299.37, 25299.39.3, and 25299.51 of the Health and Safety Code, and to amend Sections 13176, 13178, 13397.5, 13399.3 and 60318 of, and to add Article 5 (commencing with Section 13195) to Chapter 3 of Division 7 of, the Water Code, relating to water.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 25299.36 of the Health and Safety Code is amended to read:

25299.36. The board, a regional board, or a local agency may undertake or contract for corrective action pursuant to subdivision (g) of Section 25299.37 or if a situation exists which requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

SEC. 1.3. Section 25299.37 of the Health and Safety Code is amended to read:

25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this article and regulations adopted pursuant to Section 25299.77. In adopting regulations pursuant to Section 25299.77, the

board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b).

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, direction, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(2) The work plan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.77. The work plan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of this section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed actions after the work plan has been submitted but before the work plan has received regulatory agency acceptance, except that implementation of the work plan may not begin

until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the work plan approved pursuant to the section.

(6) (A) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3), and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(B) If the board receives a petition for review pursuant to subparagraph (A), the board shall review the request for preapproval and grant or deny the request pursuant to this subparagraph and subparagraph (C). The board shall deny the request for preapproval if the board makes one of the following findings:

(i) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(ii) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(iii) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(C) If the board does not deny the request for preapproval pursuant to subparagraph (B), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproved amount of those

costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(i) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(ii) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the board and the local agency. At least 15 days before the board proposes to disapprove a claim for corrective action costs which have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(g) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the board, a regional board, or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

(h) The following uniform closure letter shall be issued to the owner, operator or other responsible party taking corrective action at an

underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.77 and that no further corrective action is required at the site:

"[Case File Number]

Dear [Responsible Party] :

This letter confirms the completion of a site investigation and corrective action for the underground storage tank(s) formerly located at the above–described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tank(s) are greatly appreciated.

Based on information in the above–referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25299.37 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.77 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (h) of Section 25299.37 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

[Name of Board Executive Director, Regional Board Executive Officer, or Local Agency Director]"

SEC. 1.5. Section 25299.39.3 of the Health and Safety Code is amended to read:

25299.39.3. The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to Sections 25299.36 and 25299.37. The access shall be

obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

SEC. 1.7. 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 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 corrective action pursuant to subdivision (g) of Section 25299.37.

(i) To pay claims pursuant to Section 25299.58.

SEC. 2. Section 13176 of the Water Code is amended to read:

13176. (a) The analysis of any material required by this division shall be performed by a laboratory that has accreditation or certification

pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code.

(b) No person or public entity of the state shall contract with a laboratory for environmental analyses for which the State Department of Health Services requires accreditation or certification pursuant to this chapter, unless the laboratory holds a valid certification or accreditation.

SEC. 3. Section 13178 of the Water Code is amended to read:

13178. (a) (1) On or before June 30, 2001, the state board, in conjunction with the State Department of Health Services and a panel of experts established by the state board, shall develop source investigation protocols for use in conducting source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. The protocols shall be based upon the experiences drawn from previous source investigations performed by the state board, regional boards, or other agencies, and other available data. The protocols shall include methods for identifying the location and biological origins of sources of bacteriological contamination, and, at a minimum, shall require source investigations if bacteriological standards are exceeded in any three weeks of a four-week period, or, for areas where testing is done more than once a week, 75 percent of testing days that produce an exceedence of those standards.

(2) The development of source investigation protocols pursuant to paragraph (1) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) On or before December 1, 2001, the state board, in conjunction with the State Department of Health Services, shall report to the Legislature on the methods by which it intends to conduct source investigations of storm drains that produce exceedences of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code. Factors to be addressed in the report shall include the approximate number of public beaches expected to be affected by the exceedence of bacteriological standards established pursuant to subdivision (c) of Section 115880 of the Health and Safety Code, as well as the costs expected for source investigation of the storm drains affecting those public beaches. The report shall include a timeline for completion of source investigations.

SEC. 4. Article 5 (commencing with Section 13195) is added to Chapter 3 of Division 7 of the Water Code, to read:

Article 5. Electronic Submission of Reports

13195. For purposes of this article, the following terms have the following meanings:

(a) ''Public domain'' means a format that may be duplicated, distributed, and used without payment of a royalty or license fee.

(b) ''Report'' means any document or item that is required for submission in order for a person to comply with a regulation, directive, or order issued by the state board, a regional board, or a local agency pursuant to a program administered by the state board, including, but not limited to, any analysis of material by a laboratory that has accreditation or certification pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code.

13196. (a) The state board may require a person submitting a report to the state board, a regional board, or a local agency to submit the report in electronic format. The state board may also require that any report submitted in electronic format include the latitude and longitude, accurate to within one meter, of the location where any sample analyzed in the report was collected.

(b) The state board shall adopt a single, standard format for the electronic submission of analytical and environmental compliance data contained in reports. In adopting a standard format, the state board shall only consider formats that meet all of the following criteria:

(1) Are available free of charge.

(2) Are available in the public domain.

(3) Have available public domain means to import, manipulate, and store data.

(4) Allow the importation of data into tables indicating relational distances.

(5) Allow the verification of data submission consistency.

(6) Allow for inclusion of all of the following information:

(A) The physical site address from which the sample was taken, along with any information already required for permitting and reporting unauthorized releases.

(B) Environmental assessment data taken during the initial site investigation phase, as well as the continuing monitoring and evaluation phases.

(C) The latitude and longitude, accurate to within one meter, of the location where any sample was collected.

(D) A description of all tests performed on the sample, the results of that testing, any quality assurance and quality control information, any available narrative information regarding the collection of the sample, and any available information concerning the laboratory's analysis of the sample.

(7) Fulfill any additional criteria the state board determines appropriate for an effective electronic report submission program.

13197.5. (a) The state board shall adopt, not later than March 1, 2001, emergency regulations in accordance with Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code implementing a statewide program for the electronic submission of reports required pursuant to Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code and Article 4 (commencing with Section 25299.36) of Chapter 6.75 of Division 20 of the Health and Safety Code, for those reports that contain soil or water chemistry analysis by a laboratory certified or accredited pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code.

(b) (1) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before March 1, 2001, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(2) (A) Except as specified in subparagraph (B), subdivisions (e) to (h), inclusive, of Section 11346.1 of the Government Code apply to any emergency regulations adopted pursuant to this section.

(B) Notwithstanding the 120-day period imposed in subdivision (e) of Section 11346.1 of the Government Code, the state board shall have one calendar year from the effective date of any emergency regulations adopted pursuant to this section to comply with that subdivision.

(c) Regulations adopted pursuant to this section may not require the electronic submission of reports before July 1, 2001, but may require the electronic submission of reports on or after July 1, 2001.

(d) Regulations adopted pursuant to this section may specify either of the following as the required reporting format:

(1) The Geographic Environmental Information Management System format as described in the report submitted to the state board on July 1, 1999, by the Lawrence Livermore National Laboratory, entitled, ''Evaluating the Feasibility of a Statewide Geographic Information System.''

(2) The Electronic Deliverable Format (EDF) developed by the United States Army Corps of Engineers, as the same may be revised from time to time. The specification of the EDF as the reporting format shall be deemed to satisfy the requirements of subdivision (b) of Section 13196.

13198. (a) On or before January 1, 2003, based upon an evaluation of the statewide underground storage tank electronic report submission project conducted pursuant to Section 13197.5, the state board shall report to the Legislature and the Governor on the feasibility and appropriateness of extending the electronic report submission project to all state board programs.

(b) Before July 1, 2003, no state agency may require the electronic submission of any soil or water chemistry analysis by a laboratory certified or accredited pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code in an electronic format other than the electronic format specified by the state board pursuant to this article.

(c) Notwithstanding any other provision of this article, the state board may require the electronic submission of reports for programs, other than programs described in subdivision (a) of Section 13197.5, in a format approved by the state board.

SEC. 5. Section 13397.5 of the Water Code is amended to read:

13397.5. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) ''Abandoned mine waste'' means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property on, or discharging from, abandoned mined lands, directly resulting from, or displaced by, surface mining operations.

(b) ''Abandoned mined lands'' has the same meaning as ''abandoned surface mined area,'' as defined in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 2796 of the Public Resources Code.

(c) ''Acid rock drainage'' means acid waste discharge that results from the oxidation of metal sulfide in minerals associated with mined lands.

(d) ''Mined lands'' has the same meaning as set forth in Section 2729 of the Public Resources Code.

(e) ''Oversight agency'' means either the state board or a regional board. If the remediating agency is a regional board, the state board shall be the oversight agency. If the remediating agency is the state board, the oversight agency shall be the Site Designation Committee established pursuant to Section 25261 of the Health and Safety Code. The committee shall have the powers and functions specified in Chapter 6.65 (commencing with Section 25260) of Division 20 of the Health and Safety Code, except that neither the chairperson of the state board, nor any designee, shall participate in the actions of the committee relating to the state board as a remediating agency.

(f) ''Remediating agency'' or ''agency'' means any public agency, or any private individual or entity acting under a cooperative agreement with a public agency, that prepares and submits a remediation plan in accordance with this chapter. ''Remediating agency'' includes, but is not limited to, a public agency that holds title to abandoned mined lands for the purpose of remediating those lands or that is engaging in remediation activities that are incidental to the ownership of the lands for other than mining purposes. ''Remediating agency'' does not include any person

or entity that is not a public agency, that, before implementing an approved remediation plan, owns or has owned a property interest, other than a security interest, in the abandoned mined lands being remediated, or is or has been legally responsible for, or had a direct financial interest in, or participated in, any mining operation, including exploration, associated with the abandoned mined lands being remediated.

(g) ''Remediation plan'' means a plan to improve the quality of the waters of the state that have been directly and adversely impacted by abandoned mine waste.

SEC. 6. Section 13399.3 of the Water Code is amended to read:

13399.3. On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the regional boards to implement this chapter and the results of that implementation. Each regional board shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 13399 have been achieved.

SEC. 7. Section 60318 of the Water Code is amended to read:

60318. (a) If the board determines, by resolution, that there is a problem of groundwater contamination that a proposed program will remedy or ameliorate, an operator may make extractions of groundwater to remedy or ameliorate that problem exempt from any replenishment assessment if the water is not applied to beneficial surface use, its extractions are made in compliance with all the terms and conditions of the board resolution, and the board has determined in the resolution either of the following:

(1) The groundwater to be extracted is unusable and cannot be economically blended for use with other water.

(2) The proposed program involves extraction of usable water in the same quantity as will be returned to the underground without degradation of quality.

(b) The resolution may provide those terms and conditions the board deems appropriate, including, but not limited to, restrictions on the quantity of extractions to be so exempted, limitations on time, periodic reviews, requirement of submission of test results from a laboratory holding a valid certification or accreditation as required by Section 13176, and any other relevant terms or conditions. Upon written notice to the operator involved, the board may rescind or modify its resolution. The rescission or modification of the resolution shall apply to groundwater extractions occurring more than 10 days after the rescission or modification. Notice of rescission or modification shall be either mailed first-class mail, postage prepaid, at least two weeks prior to the meeting of the board at which the rescission or modification will be

made to the address of record of the operator or personally delivered two weeks prior to the meeting. All board determinations shall be final.

SEC. 8. Subdivision (f) of Section 13397.5 of the Water Code, as amended by Section 4 of this act, clarifies, and is declaratory of, existing law.

CHAPTER 728

An act to amend Section 65040.12 of the Government Code, to amend Section 72000 of, and to add Sections 72001.5, 72002, 72003, and 72004 to, the Public Resources Code, relating to environmental justice.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 65040.12 of the Government Code is amended to read:

65040.12. (a) The office shall be the coordinating agency in state government for environmental justice programs.

(b) The director shall do all of the following:

(1) Consult with the Secretaries of the California Environmental Protection Agency, the Resources Agency, the Trade and Commerce Agency, and the Business, Transportation and Housing Agency, the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code, any other appropriate state agencies, and all other interested members of the public and private sectors in this state.

(2) Coordinate the office's efforts and share information regarding environmental justice programs with the Council on Environmental Quality, the United States Environmental Protection Agency, the General Accounting Office, the Office of Management and Budget, and other federal agencies.

(3) Review and evaluate any information from federal agencies that is obtained as a result of their respective regulatory activities under federal Executive Order 12898, and from the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code.

(c) For the purposes of this section, ''environmental justice'' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

SEC. 1.5. Section 72000 of the Public Resources Code is amended to read:

72000. The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following:

(a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state.

(c) Ensure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies.

(d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(e) Coordinate its efforts and share information with the United States Environmental Protection Agency.

(f) Identify differential patterns of consumption of natural resources among people of different socioeconomic classifications for programs within the agency.

(g) Consult with and review any information received from the Working Group on Environmental Justice established to assist the California Environmental Protection Agency in developing an agencywide strategy pursuant to Section 72002 in meeting the requirements of this section.

SEC. 1.6. Section 72001.5 is added to the Public Resources Code, to read:

72001.5. In developing the model environmental justice mission statement pursuant to Section 72001, the California Environmental Protection Agency shall consult with, review, and evaluate any information received from the Working Group on Environmental Justice established pursuant to Section 72002.

SEC. 1.7. Section 72002 is added to the Public Resources Code, to read:

72002. (a) On or before January 15, 2002, the Secretary for Environmental Protection shall convene a Working Group on Environmental Justice to assist the California Environmental Protection Agency in developing an agencywide strategy for identifying and

addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(b) The working group shall be composed of the Secretary for Environmental Protection, the Chairs of the State Air Resources Board, the California Integrated Waste Management Board, and the State Water Resources Control Board, the Director of Toxic Substances Control, the Director of Pesticide Regulation, the Director of Environmental Health Hazard Assessment, and the Director of Planning and Research.

(c) The working group shall do all of the following:

(1) Examine existing data and studies on environmental justice, and consult with state, federal, and local agencies and affected communities.

(2) Recommend criteria to the Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(3) Recommend procedures and provide guidance to the California Environmental Protection Agency for the coordination and implementation of intraagency environmental justice strategies.

(4) Recommend procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy.

(5) Recommend procedures to ensure that public documents, notices, and public hearings relating to human health or the environment are concise, understandable, and readily accessible to the public. The recommendation shall include guidance for determining when it is appropriate for the California Environmental Protection Agency to translate crucial public documents, notices, and hearings relating to human health or the environment for limited-English-speaking populations.

(6) Hold public meetings to receive and respond to public comments regarding recommendations required pursuant to this section, prior to the finalization of the recommendations. The California Environmental Protection Agency shall provide public notice of the availability of draft recommendations at least one month prior to the public meetings.

(7) Make recommendations on other matters needed to assist the agency in developing an intraagency environmental justice strategy.

SEC. 2. Section 72003 is added to the Public Resources Code, to read:

72003. The Secretary for Environmental Protection shall, on or before January 15, 2002, convene an advisory group to assist the working group described in Section 72002 by providing recommendations and information to, and serving as a resource for, the working group. The Secretary for Environmental Protection shall

appoint members to the advisory group according to the following categories:

(a) Two representatives of local or regional land use planning agencies.

(b) Two representatives from air districts.

(c) Two representatives from certified unified program agencies (CUPAs).

(d) Two representatives from environmental organizations.

(e) Three representatives from the business community, one from a small business and two from a large business, except that two of the representatives of the business community may be from an association that represents small or large businesses. As used in this subdivision, ''small business'' has the meaning given that term by subdivision (c) of Section 1028.5 of the Code of Civil Procedure, and a large business is any business other than a small business.

(f) Two representatives from community organizations. The advisory group may form subcommittees to address specific types of environmental program areas. The California Environmental Protection Agency shall provide a reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

SEC. 3. Section 72004 is added to the Public Resources Code, to read:

72004. The Secretary for Environmental Protection shall, not later than January 1, 2006, and every three years thereafter, prepare and submit to the Governor and the Legislature a report on the implementation of this part.

CHAPTER 729

An act to amend Sections 39607, 39607.5, 40002, 40100.5, 40709, 40714.5, 40727.2, 40728.5, 40910, 40914, 40925, 40980, 41954, and 44287 of, and to add Section 40962.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 39607 of the Health and Safety Code is amended to read:

39607. The state board shall:

(a) Establish a program to secure data on air quality in each air basin established by the state board.

(b) Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not necessarily limited to, the contribution of natural sources, mobile sources, and area sources of emissions, including a separate identification of those sources not subject to district permit requirements, to the extent feasible and necessary to carry out the purposes of this chapter. The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose.

(c) Monitor air pollutants in cooperation with districts and with other agencies to fulfill the purpose of this division.

(d) Adopt test procedures to measure compliance with its nonvehicular emission standards and those of districts.

(e) Establish and periodically review criteria for designating an air basin attainment or nonattainment for any state ambient air quality standard set forth in Section 70200 of Title 17 of the California Code of Regulations. In developing and reviewing these criteria, the state board shall consider instances where there is poor or limited ambient air quality data, and shall consider highly irregular or infrequent violations. The state board shall provide an opportunity for public comment on the proposed criteria, and shall adopt the criteria after a public hearing.

(f) Evaluate, in consultation with the districts and other interested parties, air quality-related indicators which may be used to measure or estimate progress in the attainment of state standards and establish a list of approved indicators. On or before July 1, 1993, the state board shall identify one or more air quality indicators to be used by districts in assessing progress as required by subdivision (b) of Section 40924. The state board shall continue to evaluate the prospective application of air quality indicators and, upon a finding that adequate air quality modeling capability exists, shall identify one or more indicators which may be used by districts in lieu of the annual emission reductions mandated by subdivision (a) of Section 40914. In no case shall any indicator be less stringent or less protective, on the basis of overall health protection, than the annual emission reduction requirement in subdivision (a) of Section 40914.

(g) Establish, not later than July 1, 1996, a uniform methodology which may be used by districts in assessing population exposure, including, but not limited to, reduction in exposure of districtwide subpopulations such as children, the elderly, and persons with respiratory disease, to ambient air pollutants at levels above the state ambient air quality standards, for estimating reductions in population exposure for the purposes of Sections 40913, 40924, and 41503, and for

the establishment of the means by which reductions in population exposures may be achieved. The methodology adopted pursuant to this subdivision shall be consistent with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and with this division, including, but not limited to, Section 39610.

SEC. 2. Section 39607.5 of the Health and Safety Code is amended to read:

39607.5. (a) The state board shall develop, and adopt in a public hearing a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) In developing the methodology, the state board shall do all of the following:

(1) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(3) Ensure that the methodology does not do any of the following:

(A) Result in the crediting of air emissions that already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(B) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(C) Otherwise provide for double-counting emission reductions.

(4) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(5) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).

(7) Consider all of the following factors:

(A) How long credits should be valid.

(B) Whether, and which, banking opportunities may exist for credits.

(C) How to provide flexibility to sources seeking to use credits so that they remain interchangeable and negotiable until used.

(D) How to ensure a viable trading process for sources wishing to trade credits consistent with this section.

(E) How to ensure that, if credits may be used within and between adjacent districts or air basins where sources are in proximity to one another, the use occurs while maintaining and improving air quality in both districts or air basins.

(c) If necessary, the state board shall periodically update the methodology as it applies to future transactions.

(d) The state board shall periodically review each district's emission reduction and credit trading programs to ensure that the programs comply with the methodology developed pursuant to this section.

(e) The state board shall annually prepare and submit a report to the Legislature and the Governor that summarizes the actions taken by the state board to implement this section.

SEC. 3. Section 40002 of the Health and Safety Code is amended to read:

40002. (a) There is continued in existence and shall be, in every county, a county district, unless the entire county is included within the Antelope Valley district, the bay district, the Mojave Desert district, the south coast district, the Sacramento Metropolitan Air Quality Management District, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district.

(b) If only a part of the county is included within the Antelope Valley district, the bay district, the south coast district, the Mojave Desert district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district, there is in that part of the county not included within any of those districts a county district, for which different air quality rules and regulations may be required.

SEC. 4. Section 40100.5 of the Health and Safety Code is amended to read:

40100.5. (a) The membership of the governing board of each county district shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. In districts where the county and the cities have agreed that each city shall be represented on the governing board, each city shall select its own representative to the governing board. The members of the governing board who are county supervisors shall be selected by the county.

(e) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b), and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number which is not a whole number results from the application of the term ''one-third,'' ''one-half,'' or ''two-thirds,'' the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

SEC. 5. Section 40709 of the Health and Safety Code is amended to read:

40709. (a) Every district board shall establish by regulation a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions. The system shall provide that only those reductions in the emission of air contaminants that are not otherwise required by any federal, state, or district law, rule, order, permit, or regulation shall be registered, certified, or otherwise approved by the district air pollution control officer before they may be banked and used to offset future increases in the emission of air contaminants. The system shall be

subject to disapproval by the state board pursuant to Chapter 1 (commencing with Section 41500) of Part 4 within 60 days after adoption by the district.

(b) The system is not intended to recognize any preexisting right to emit air contaminants, but to provide a mechanism for districts to recognize the existence of reductions of air contaminants that can be used as offsets, and to provide greater certainty that the offsets shall be available for emitting industries.

(c) Notwithstanding subdivision (a), emissions reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, if those reductions satisfy all criteria established by regulation pursuant to subdivision (a).

(d) This section does not apply to any district that is not required to prepare and submit a plan for attainment of state ambient air quality standards pursuant to Section 40911 if both of the following apply to the district:

(1) The district is not in a federal nonattainment area for any national ambient air quality standard unless the sole reason for the nonattainment is due to air pollutant transport.

(2) An owner or operator of a source or proposed source has not petitioned the district to establish a banking system.

SEC. 6. Section 40714.5 of the Health and Safety Code is amended to read:

40714.5. (a) The Legislature hereby finds and declares all of the following:

(1) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(2) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(3) An increased supply of emission reduction credits is beneficial to local economies.

(4) The purpose of this section is to provide an incentive to generate additional and fully valued emission reduction credits by encouraging emission reductions from these sources without subjecting them to a district permitting process.

(b) (1) With respect to any emission reduction that occurs on or after January 1, 1991, at a source that was and remains exempt from district rules and regulations, the district shall grant emission reduction credits or marketable trading credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. Emission reduction credits or marketable trading credits issued by the district for those exempt sources may be reduced

only when applied to the permitting of other stationary sources as a result of new source review, or in accordance with any applicable requirement of a marketable trading credit program.

(2) Any credits issued by a district pursuant to this subdivision shall meet all of the requirements of state and federal law, including, but not limited to, all of the following requirements:

(A) The credits shall not result in the crediting of air emissions which are already contemporaneously required by an emission control measure in a plan necessary to achieve state and federal ambient air standards.

(B) The credits shall not provide for an additional discount of credits solely as a result of emission reduction credits trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources.

(C) The credits shall not, in any manner, result in double-counting of emission reductions.

(D) The credits shall be permanent, enforceable, quantifiable, and surplus.

(3) This subdivision applies statewide in any area not otherwise excluded under subdivision (d) of Section 40709.

SEC. 7. Section 40727.2 of the Health and Safety Code is amended to read:

40727.2. (a) In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district. The analysis shall also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b). The analysis shall be in a format that minimizes paperwork and, at the option of the district, may be in matrix form.

(b) Within 60 days from the date of a district's publication, pursuant to Section 40923, of the list of regulatory measures proposed for adoption in the following year, any person may inform the district of any existing federal or state air pollution control requirement or guideline or proposed or existing district air pollution control requirement or guideline that applies to the same type of source or equipment in that district as any proposed new or amended district rule or regulation on that district's list of regulatory measures. If any person informs the district of any requirement or guideline that does not apply to the same

type of source or equipment, the district shall notify the person to that effect and shall not be required to review that requirement or guideline.

(c) The analysis prepared pursuant to subdivision (a) shall compare the elements of each of the identified air pollution control requirements to the corresponding element or elements of the district's proposed new or amended rule or regulation.

(d) Air pollution control requirement elements to be reviewed pursuant to subdivision (c) are all of the following:

(1) Averaging provisions, units, and any other pertinent provisions associated with emission limits.

(2) Operating parameters and work practice requirements.

(3) Monitoring, reporting, and recordkeeping requirements, including test methods, format, content, and frequency.

(4) Any other element that the district determines warrants review.

(e) If one or more elements of a district's proposed new or amended rule or regulation differs from corresponding elements of any existing air pollution control requirement or guideline applicable to the same equipment or source type, the analysis prepared pursuant to subdivision (a) shall note the difference or differences.

(f) The public hearing notice given to the state board pursuant to subdivision (b) of Section 40725, and any notice mailed to interested persons, shall include a statement indicating that the analysis required by this section has been prepared, and shall provide the name, address, and telephone number of a district officer from whom copies may be requested. The analysis required by this section shall be provided to the public upon request.

(g) If a district's proposed new or amended rule or regulation does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, or if the proposed new or amended rule or regulation is a verbatim adoption or incorporation by reference of a federal New Source Performance Standard adopted pursuant to Section 111 of the federal Clean Air Act (42 U.S.C. Sec. 7411) or an airborne toxic control measure established by the state board pursuant to Section 39658, a district may elect to comply with subdivision (a) by finding that the proposed new or amended rule or regulation falls within one or more of the categories specified in this subdivision.

(h) Nothing in this section limits the existing authority of districts to determine the form, content, and stringency of their rules and regulations. In implementing this section, it is the intent of the Legislature that the districts retain their existing authority and flexibility to tailor their air pollution emission control requirements to local circumstances.

(i) For purposes of this section, a district rule or regulation shall be considered ''proposed'' if the rule or regulation has been made available to the general public in connection with a request for comments.

(j) To the extent that the district board determines that there are additional costs imposed by this section, the district board shall recover those additional costs through the imposition of fees on regulated entities.

SEC. 8. Section 40728.5 of the Health and Safety Code is amended to read:

40728.5. (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation. The district board shall actively consider the socioeconomic impact of regulations and make a good faith effort to minimize adverse socioeconomic impacts, as defined below. This section does not apply to the adoption, amendment, or repeal of any rule or regulation that results in any less restrictive emissions limit if the action does not interfere with the district's adopted plan to attain ambient air quality standards, or does not result in any significant increase in emissions.

(b) For purposes of this section, ''socioeconomic impact'' means the following:

(1) The type of industries or business, including small business, affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy of the region affected by the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry or business, including small business, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation being proposed or amended.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

(c) To the extent that information on the socioeconomic impact of a regulation is required to be developed by a district pursuant to other provisions of this division, that information may be used or referenced in the assessment in order to comply with the requirements of this section.

(d) This section does not apply to any district with a population of less than 500,000 persons.

(e) Upon the approval by a majority vote of the district board, a county district is not required to include the analysis specified in

paragraphs (2) and (4) of subdivision (b) in any assessment of socioeconomic impacts for any rule or regulation that only adopts a requirement that is substantially similar to, or is required by, a state or federal statute, regulation, or applicable formal guidance document. Examples of state or federal formal guidance documents include, but are not limited to, federal Control Techniques Guidelines, state and federal reasonably available control technology determinations, state best available retrofit control technology determinations, and state air toxic control measures.

SEC. 9. Section 40910 of the Health and Safety Code is amended to read:

40910. It is the intent of the Legislature in enacting this chapter that districts shall endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. In developing attainment plans and regulations to achieve this objective, districts shall consider the full spectrum of emission sources and focus particular attention on reducing the emissions from transportation and areawide emission sources. Districts shall also consider the cost-effectiveness of their air quality programs, rules, regulations, and enforcement practices in addition to other relevant factors, and shall strive to achieve the most efficient methods of air pollution control. However, priority shall be placed upon expeditious progress toward the goal of healthful air. It is also the intent of the Legislature that redundant work shall be avoided.

SEC. 10. Section 40914 of the Health and Safety Code is amended to read:

40914. (a) Each district plan shall be designed to achieve a reduction in districtwide emissions of 5 percent or more per year for each nonattainment pollutant or its precursors, averaged every consecutive three-year period, unless an alternative measure of progress is approved pursuant to Section 39607.

(b) A district may use an alternative emission reduction strategy which achieves less than an average of 5 percent per year reduction in districtwide emissions if the district demonstrates to the state board, and the state board concurs in, either of the following:

(1) That the alternative emission reduction strategy is equal to or more effective than districtwide emission reductions in improving air quality.

(2) That despite the inclusion of every feasible measure in the plan, and an expeditious adoption schedule, the district is unable to achieve at least a 5-percent annual reduction in districtwide emissions.

(c) For purposes of this section and Section 41503.1, for each district that is designated nonattainment for a state ambient air quality standard but is designated attainment for the federal air quality standard for the

same pollutant, reductions in emissions shall be calculated with respect to the actual level of emissions that exist in each district during 1990, as determined by the state board. All reductions in emissions occurring after December 31, 1990, including, but not limited to, reductions in emissions resulting from measures adopted prior to December 31, 1990, shall be included in this calculation. For each district that is designated nonattainment for both state and federal ambient air quality standards for a single pollutant, reductions in emissions shall be calculated with respect to the actual level of emissions that exist in each district during the baseline year used in the state implementation plan required by the federal Clean Air Act. All reductions in emissions occurring after December 31 of the baseline year, including, but not necessarily limited to, reductions in emissions resulting from measures adopted prior to December 31 of the baseline year, shall be included in this calculation.

SEC. 11. Section 40925 of the Health and Safety Code is amended to read:

40925. (a) On or before December 31, 1994, and at least once every three years thereafter, every district shall review and revise its attainment plan to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 40914, and to incorporate new data or projections into the plan, including, but not limited to, the quantity of emission reductions expected from the control measures adopted in the preceding three-year period and the dates that those emission reductions will be achieved, and the rates of population-related, industry-related, and vehicle-related emissions growth actually experienced in the district and projected for the future. This data shall be compared to the rate of emission reductions and growth projected in the previous triennial plan revision. Upon adoption of each triennial plan revision at a public hearing, the district board shall submit the revision to the state board.

(b) A district may modify the emission reduction strategy or alternative measure of progress for subsequent years based on this assessment if the district demonstrates to the state board, and the state board finds, that the modified strategy is at least as effective in improving air quality as the strategy which is being replaced.

(c) Each district which cannot demonstrate attainment by December 31, 1999, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997, unless the state board determines, by not later than February 1, 1997, that a comprehensive plan update is unnecessary. The revised plan shall include an interim air quality improvement goal or an equivalent emission reduction strategy, subject to review and approval by the state board, to be achieved in the subsequent five-year period.

SEC. 12. Section 40962.5 is added to the Health and Safety Code, to read:

40962.5. Notwithstanding any other provision of law, as of July 1, 1996, Article 2 (commencing with Section 40120) of Chapter 2 shall not be applicable to the Sacramento district.

SEC. 13. Section 40980 of the Health and Safety Code is amended to read:

40980. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 40963, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

(c) (1) On and after July 1, 1994, the membership of the Sacramento district board shall include (A) one or more members who are mayors or city council members, or both, and (B) one or more members who are county supervisors.

(2) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(d) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(e) (1) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

(2) Subsequent appointments to represent a single city within the district on the Sacramento district board shall be made by the city council of that city at a regularly scheduled city council meeting, consistent with state notice requirements.

(3) The city selection committee shall be convened only if there is to be a change in the board members designated to represent more than one city.

(f) (1) If the district fails to comply with subdivision (c), one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors. The number of those members shall be determined as provided in paragraph (2) of

subdivision (c), and the members shall be selected pursuant to subdivision (e).

(2) For purposes of paragraph (1), if any number which is not a whole number results from the application of the term ''one-third'' or ''two-thirds,'' the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

SEC. 14. Section 41954 of the Health and Safety Code is amended to read:

41954. (a) The state board shall adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standard.

(b) The state board shall, after a public hearing, adopt additional performance standards that are reasonable and necessary to ensure that systems for the control of gasoline vapors resulting from motor vehicle fueling operations do not cause excessive gasoline liquid spillage and excessive evaporative emissions from liquid retained in the dispensing nozzle or vapor return hose between refueling events, when used in a proper manner. To the maximum extent practicable, the additional performance standards shall allow flexibility in the design of gasoline vapor recovery systems and their components.

(c) (1) The state board shall certify, in cooperation with the districts, only those gasoline vapor control systems that it determines will meet the following requirements, if properly installed and maintained:

(A) The systems will meet the requirements of subdivision (a).

(B) With respect to any system designed to control gasoline vapors during vehicle refueling, that system, based on an engineering evaluation of that system's component qualities, design, and test performance, can be expected, with a high degree of certainty, to comply with that system's certification conditions over the warranty period specified by the board.

(C) With respect to any system designed to control gasoline vapors during vehicle refueling, that system shall be compatible with vehicles equipped with onboard refueling vapor recovery (ORVR) systems.

(2) The state board shall enumerate the specifications used for issuing the certification. After a system has been certified, if circumstances beyond the control of the state board cause the system to no longer meet the required specifications or standards, the state board shall revoke or modify the certification.

(d) The state board shall test, or contract for testing, gasoline vapor control systems for the purpose of determining whether those systems may be certified.

(e) The state board shall charge a reasonable fee for certification, not to exceed its actual costs therefor. Payment of the fee shall be a condition of certification.

(f) No person shall offer for sale, sell, or install any new or rebuilt gasoline vapor control system, or any component of the system, unless the system or component has been certified by the state board and is clearly identified by a permanent identification of the certified manufacturer or rebuilder.

(g) (1) Except as authorized by other provisions of law and except as provided in this subdivision, no district may adopt, after July 1, 1995, stricter procedures or performance standards than those adopted by the state board pursuant to subdivision (a), and no district may enforce any of those stricter procedures or performance standards.

(2) Any stricter procedures or performance standards shall not require the retrofitting, removal, or replacement of any existing system, which is installed and operating in compliance with applicable requirements, within four years from the effective date of those procedures or performance standards, except that existing requirements for retrofitting, removal, or replacement of nozzles with nozzles containing vapor-check valves may be enforced commencing July 1, 1998.

(3) Any stricter procedures or performance standards shall not be implemented until at least two systems meeting the stricter performance standards have been certified by the state board.

(4) If the certification of a gasoline vapor control system, or a component thereof, is revoked or modified, no district shall require a currently installed system, or component thereof, to be removed for a period of four years from the date of revocation or modification.

(h) No district shall require the use of test procedures for testing the performance of a gasoline vapor control system unless those test procedures have been adopted by the state board or have been determined by the state board to be equivalent to those adopted by the state board, except that test procedures used by a district prior to January 1, 1996, may continue to be used until January 1, 1998, without state board approval.

(i) With respect to those vapor control systems subject to certification by the state board, there shall be no criminal or civil proceedings commenced or maintained for failure to comply with any statute, rule, or regulation requiring a specified vapor recovery efficiency if the vapor control equipment which has been installed to comply with applicable vapor recovery requirements meets both of the following requirements:

(1) Has been certified by the state board at an efficiency or emission factor required by applicable statutes, rules, or regulations.

(2) Is installed, operated, and maintained in accordance with the requirements set forth in the document certification and the instructions of the equipment manufacturer.

SEC. 15. Section 44287 of the Health and Safety Code is amended to read:

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) The state board may adjust the ratio of matching funds described in subdivision (e), if it determines that an adjustment is necessary in order to maximize the use of, or the air quality benefits provided by, the program, based on a consideration of the financial resources of the district.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(*l*) 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.

(m) 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.

(n) 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.

(o) 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.

(p) The commission, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (o) 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.

SEC. 16. 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.

However, 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 730

An act to amend Section 25404.3 of, and to add Sections 25404.3.1 and 25404.8 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 25404.3 of the Health and Safety Code, as amended by Chapter 144 of the Statutes of 2000, is amended to read:

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the

resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented

between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) If any of the other agencies proposed to implement certain elements of the unified program are not directly responsible to the same governing body as the applicant agency, the applicant agency maintains an agreement with any agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may

contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary

and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

SEC. 2. Section 25404.3.1 is added to the Health and Safety Code, to read:

25404.3.1. A city or other local agency, which, as of December 31, 1999, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, and that wishes to administer the unified program or an element of the unified program identified in subdivision (c) of Section 25404, shall request the secretary to include the agency in the implementation structure established by paragraph (2) of subdivision (f) of Section 25404.3. The secretary may grant the request for as long as the agency remains qualified to implement the unified program or an element of the program.

SEC. 3. Section 25404.8 is added to the Health and Safety Code, to read:

25404.8. (a) In a county for which a CUPA has not been certified on or before January 1, 2000, and where the unified program is implemented pursuant to paragraph (2) of subdivision (f) of Section 25404.3, the CUPA is eligible for an allocation pursuant to subdivision (d). The CUPA shall institute a single fee system that meets the requirements of Section 25404.5, except that the amounts to be paid by each person regulated by the unified program under the single fee system shall be set at a level so that the revenues collected under the single fee system and the amount allocated pursuant to subdivision (d) are sufficient to pay the necessary costs incurred by the CUPA in implementing the unified program. The CUPA shall determine the level to be paid by persons regulated under the unified program by conducting a workload analysis that establishes the direct and indirect costs to the CUPA of implementing the unified program.

(b) A CUPA that implements the unified program pursuant to paragraph (2) of subdivision (f) of Section 25404.3 shall use the funding allocated pursuant to subdivision (d) to implement the unified program within the jurisdiction of the CUPA in accordance with the implementation agreement reached with the secretary pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

(c) The Rural CUPA Reimbursement Account is hereby established in the General Fund and the secretary may expend the money in the account to make the allocations specified in subdivision (d).

(d) (1) Except as provided in paragraph (2), the secretary shall allocate the following amounts from the Rural CUPA Reimbursement Account to an eligible county:

(A) If the county has a population of less then 70,000 persons, the amount of the funds allocated from the account shall not exceed 75 percent of the costs incurred by the CUPA in implementing the unified program.

(B) If the county has a population of more then 70,000, but less then 100,000 persons, the amount of the funds allocated from the account shall not exceed 50 percent of the costs incurred by the CUPA in implementing the unified program.

(C) If the county has a population of more then 100,000, but less than 150,000 persons, the amount of the funds allocated from the account shall not exceed 35 percent of the costs incurred by the CUPA in implementing the unified program.

(2) The secretary shall not allocate more than sixty thousand dollars ($60,000) for all CUPAs in an eligible county.

(e) This section shall become operative July 1, 2001.

SEC. 4. On or before February 15, 2001, the California Environmental Protection Agency shall submit a report to the Legislature recommending a funding source, which may include fees, to provide a stable source of funds for unified program agencies that are implementing Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code, but have a limited number of entities regulated under the unified program.

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 731

An act to amend Sections 14504, 14529.7, 14541, 14551.5, 14552, 14553, 14561, 14571.8, 14581, 14591, 14591.1, 14591.2, and 14591.4 of, to amend and renumber Section 14595 of, to amend and repeal Section 14549.1 of, to add Sections 14514, 14515.1, 14539.5, 14541.5, and 14591.6 to, to add Chapter 8.5 (commencing with Section 14595)

to Division 12.1 of, and to repeal Sections 14571.9 and 14592 of, the Public Resources Code, relating to beverage container recycling, and making an appropriation therefor.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 14504 of the Public Resources Code is amended 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.

(10) Vegetable juice in beverage containers of 16 ounces or less.

(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) For purposes of this section, the following definitions shall apply:

(1) ''Infant formula'' means any liquid food described or sold as an alternative for human milk for the feeding of infants.

(2) (A) ''Medical food'' means a food or beverage that is formulated to be consumed, or administered enterally under the supervision of a physician, and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(B) A ''medical food'' is a specially formulated and processed product, for the partial or exclusive feeding of a patient by means of oral

intake or enteral feeding by tube, and is not a naturally occurring foodstuff used in its natural state.

(C) ''Medical food'' includes any product that meets the definition of ''medical food'' in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360ee (b)(3).

(3) ''Noncarbonated soft drink'' means a nonalcoholic, noncarbonated naturally or artificially flavored water containing sugar or sweetener or trace amounts of various elements from both natural and synthetic sources.

SEC. 2. Section 14514 is added to the Public Resources Code, to read:

14514. ''Managing employee'' includes, but is not limited to, any person who manages the operation of a facility or is authorized by the certified operator to sign shipping reports.

SEC. 3. Section 14515.1 is added to the Public Resources Code, to read:

14515.1. ''Out-of-state container'' means a used beverage container or used beverage container component that is not subject to Section 14560, and that is brought into this state.

SEC. 4. Section 14529.7 of the Public Resources Code is amended to read:

14529.7. (a) Except as provided in subdivision (b), this division does not apply to any program involving the collection and payment of deposits for beverage containers sold, used, or consumed at national parks and monuments, military installations, or any other property owned by and under the jurisdiction of the United States.

(b) To the extent permitted by federal law, this division, including, but not limited to, Section 14560.5, shall apply to a national park or monument, military installation, or any other property owned by, and under the jurisdiction of, the United States, with regard to a beverage container not otherwise subject to a program involving the collection and payment of deposits for beverage containers.

(c) For purposes of this section, ''a program involving the collection and payment of deposits'' means a program, other than one imposed pursuant to this division, at a national park or monument, military installation, or any other property owned by, and under the jurisdiction of, the United States, that imposes a deposit on a beverage container at the time of sale and provides an opportunity for the beverage container purchaser to redeem the deposit at the national park or monument, military installation, or other property owned by, and under the jurisdiction of, the United States.

SEC. 5. Section 14539.5 is added to the Public Resources Code, to read:

14539.5. (a) The department shall certify dropoff and collection programs pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification and a dropoff or collection program shall meet all the standards and requirements contained in the regulations for certification. The regulations shall require that all information be submitted to the department under penalty of perjury. The regulations shall require, in addition to any other conditions that may be imposed by the department, that both of the following conditions be met for certification:

(1) The dropoff or collection program demonstrates, to the satisfaction of the department, that the dropoff or collection program will operate in accordance with this division.

(2) The dropoff or collection program notifies the department promptly of any material change in the nature of its operations that conflicts with the information submitted in the application for certification.

(b) A certified dropoff or collection program shall not receive any refund value or processing payment on an empty beverage container that the certified dropoff or collection program knew, or should have known, was received from a noncertified recycler, on any beverage container that the certified dropoff or collection program knew or should have known came from out of this state, or any other beverage container or other product that does not have a refund value established pursuant to Section 14560.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payment made from the fund to a dropoff or collection program pursuant to Section 14573.5 that is based on a document that is not prepared or maintained in compliance with any applicable recordkeeping requirements required pursuant to this division or the department's regulations and that does not allow the department to verify the claims for those payments.

SEC. 6. Section 14541 of the Public Resources Code is amended to read:

14541. (a) The department may issue a certificate pursuant to an initial or renewal application for certification as probationary, and the department may issue any other certificate as probationary pursuant to an enforcement action.

(b) A probationary certificate issued pursuant to this section shall be issued for a limited period of not more than two years. Before the end of the probationary period, the department shall issue a nonprobationary certificate, extend the probationary period for not more than one year, or, after notice to the probationary certificate holder, revoke the probationary certificate. Subsequent to the revocation, the former probationary certificate holder may request a hearing, which,

notwithstanding, Section 11445.20 of the Government Code, shall be conducted in the same form as a hearing for an applicant whose original application for certification is denied.

(c) If conditions are imposed on the certificate holder as part of a disciplinary proceeding conducted pursuant to Section 14591.2, the certificate shall be considered probationary. If, at any time, the certificate holder violates any term or condition of the probationary certificate, the certificate may be revoked or suspended, after three days' notice, without any further hearing by the department.

SEC. 7. Section 14541.5 is added to the Public Resources Code, to read:

14541.5. Any certification or registration granted by the department is a privilege and not a vested right or interest.

SEC. 8. Section 14549.1 of the Public Resources Code is amended 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 operators of 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 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. 9. Section 14551.5 of the Public Resources Code is amended 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.

(e) An operator of a curbside program registered pursuant to this section shall be deemed a certificate holder for purposes of this division.

SEC. 10. Section 14552 of the Public Resources Code is amended to read:

14552. (a) The department shall establish and implement an auditing system to ensure that the information collected, and refund values and redemption payments paid pursuant to this division, comply with the purposes of this division. Notwithstanding Sections 14573 and 14573.5, the auditing system adopted by the department may include prepayment or postpayment controls.

(b) (1) The department may audit or investigate any action taken during the following periods and may determine if there was compliance with this division and the regulations adopted pursuant to this division, during any, or all, of that period:

(A) On and before December 31, 2001, the department may audit or investigate any action taken up to two years before the onset of the audit or investigations.

(B) On and after January 1, 2002, the department may audit or investigate any action taken up to three years before the onset of the audit or investigation.

(2) Notwithstanding any other provision of law establishing a shorter statute of limitation, the department may take an enforcement action, including, but not limited to, an action for restitution or to impose penalties, at any time within two years after the department discovers, or with reasonable diligence, should have discovered, a violation of this division or the regulations adopted pursuant to this division.

(c) During the conduct of any inspection, including, but not limited to, an inspection conducted as part of an audit or investigation, the entity that is the subject of the inspection shall, during its normal business hours, provide the department with immediate access to its facilities,

operations, and any relevant record, that, in the department's judgment, the department determines are necessary to carry out this section to verify compliance with this division and the regulations adopted pursuant to this division.

(1) The department may take disciplinary action pursuant to Section 14591.2 against any person who fails to provide the department with access pursuant to this subdivision including, but not limited to, imposing penalties and the immediate suspension or termination of any certificate or registration held by the operator.

(2) The department shall protect any information obtained pursuant to this section in accordance with Section 14554, except that this section does not prohibit the department from releasing any information that the department determines to be necessary in the course of an enforcement action.

(d) The auditing system adopted by the department shall allow for reasonable shrinkage in material due to moisture, dirt, and foreign material. The department, after an audit by a qualified auditing firm and a hearing, shall adopt a standard to be used to account for shrinkage and shall incorporate this standard in the audit process.

(e) If the department prevails against any entity in any civil or administrative action brought pursuant to this division, and money is owed to the department as a result of the action, the department may offset the amount against amounts claimed by the entity to be due to it from the department. The department may take this offset by withholding payments from the entity or by authorizing all processors to withhold payment to a certified recycling center.

(f) If the department determines, pursuant to an audit or investigation, that a distributor or beverage manufacturer has overpaid the redemption payment or processing fee, the department may do either of the following:

(1) Offset the overpayment against future payments.

(2) Refund the payment pursuant to Article 3 (commencing with Section 13140) of Chapter 2 of Part 3 of Division 3 of Title 2 of the Government Code.

SEC. 11. Section 14553 of the Public Resources Code is amended to read:

14553. (a) All reports, claims, and other information required pursuant to this division and submitted to the department shall be complete, legible, and accurate, as determined by the department by regulation, and shall be signed, by an officer, director, managing employee, or owner of the certified recycling center, processor, distributor, beverage manufacturer, container manufacturer, or other entity.

(b) The department may inspect the operations, processes, and records of any entity required to submit a report to the department pursuant to this division to determine the accuracy of the report and compliance with the requirements of this division.

(c) A violation of this section is subject to the penalties specified in Section 14591.1.

SEC. 12. 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,'' ''California Cash Refund,'' or ''CA 2.5c,'' if the container is less than 24 ounces, or ''CA Cash Refund,'' ''California Cash Refund,'' or ''CA 5c,'' if the container is 24 ounces or more, 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 Chapter 815 of the Statutes of 1999, 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.

(h) Notwithstanding any other requirement of this section, any beverage container that is included within the scope of this division on January 1, 2001, but that was not subject to this division before that date, shall be exempt from the labeling requirements of this section until January 1, 2002. However, even though these beverage containers are not required to bear the message required by this section from January 1, 2001, to January 1, 2002, 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. 13. 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 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 that caused the convenience zone to be exempt no longer exists, and the department determines that the criteria for an exemption specified in this section are not presently applicable to the convenience zone.

(2) The department determines that the convenience zone exemption was granted due to an administrative error.

(f) 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.

(g) 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 (e) occurs.

SEC. 14. Section 14571.9 of the Public Resources Code is repealed.

SEC. 15. 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) On or before July 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. 16. Section 14591 of the Public Resources Code is amended to read:

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for each subsequent separate violation per day.

(b) (1) Every person who, with intent to defraud, takes any of the following actions is guilty of fraud:

(A) Submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5.

(B) Fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550.

(C) Fails to make payments as required by Section 14574.

(D) Redeems out-of-state containers, rejected containers, line breakage, or containers that have already been redeemed.

(E) Returns redeemed containers to the marketplace for redemption .

(F) Brings out-of-state containers, rejected containers, or line breakage to the marketplace for redemption.

(G) Submits a false or fraudulent claim for handling fee payments pursuant to Section 14585.

(2) If the money obtained or withheld pursuant to paragraph (1) exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld pursuant to paragraph (1) equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not

more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) For purposes of this section and Chapter 8.5 (commencing with Section 14595), ''line breakage'' and ''rejected container'' have the same meanings as defined in the regulations adopted or amended by the department pursuant to this division.

SEC. 17. Section 14591.1 of the Public Resources Code is amended to read:

14591.1. (a) (1) The department may assess a civil penalty upon a person who violates this division in an amount greater than one thousand dollars ($1,000) pursuant to this division and any regulations adopted 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.

(2) The department may assess a civil penalty upon a person who violates this division in an amount equal to, or less than, one thousand dollars ($1,000), using a notice of violation process established by regulation and may use an informal hearing process 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.

(3) 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 (d) of Section 14580.

(b) Any person who intentionally or negligently violates this division may be assessed a civil penalty by the department pursuant to subdivision (a) 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 pursuant to subdivision (a) 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.

(e) In determining the amount of penalties to be imposed pursuant to this division, the department shall take into consideration the nature, circumstances, extent and gravity of the violation, the costs associated with bringing the action and, with respect to the violator, the ability to pay, the degree of culpability, compliance history, and any other matters that justice may require.

SEC. 18. Section 14591.2 of the Public Resources Code is amended to read:

14591.2. (a) The department may take disciplinary action against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. A responsible party includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee. Except as otherwise provided in this division, the department shall provide a 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 before taking any disciplinary action against a certificate holder.

(b) All of the following are grounds for disciplinary action, in the form determined by the department in accordance with subdivision (c):

(1) The responsible party engaged in fraud or deceit to obtain a certificate or registration.

(2) The responsible party engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or registrant.

(3) The responsible party violated this division or any regulation adopted pursuant to this division, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business.

(4) The responsible party is convicted of any crime of moral turpitude or fraud, any crime involving dishonesty, or any crime substantially related to the qualifications, functions, or duties of a certificate holder.

(c) The department may take disciplinary action pursuant to this section, by taking any one of, or any combination of, the following:

(1) Immediate revocation of the certificate or registration, or revocation of a certificate or registration as of a specific date in the future.

(2) Immediate suspension of the certificate or registration for a specified period of time, or suspension of the certificate or registration as of a specific date in the future. Notwithstanding subdivision (a), the department may impose a suspension of five days or less through an informal notice, if the action is subject to a stay on appeal, pending an informal hearing convened in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Imposition on the certificate or registration of any condition that the department determines would further the goals of this division.

(4) Issuance of a probationary certificate or registration with conditions determined by the department.

(5) Collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the fund.

(6) Imposition of civil penalties pursuant to Section 14591.1.

(d) The department may do any of the following in taking disciplinary action pursuant to this section:

(1) If a certificate holder or registrant holds certificates or is registered to operate at more than one site or to operate in more than one capacity at one location, such as an entity certified as both a processor and a recycling center, the department may simultaneously revoke, suspend, or impose conditions upon some, or all of, the certificates held by the responsible party.

(2) If the responsible party is an officer, director, partner, manager, employee, or the owner of a controlling ownership interest of another certificate holder or registrant, that other operator's certificate or registration may also be revoked, suspended, or conditioned by the department in the same proceeding, if the other certificate holder or registrant is given notice of that proceeding, or in a subsequent proceeding.

(3) (A) If, pursuant to notice and a hearing conducted by the director or the director's designee in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the department determines that the continued operation of a certified or registered entity poses an immediate and significant threat to the fund, the department may order the immediate suspension of the certificate holder or registrant, pending revocation of the certificate or registration, or the issuance of a probationary certificate imposing reasonable terms and conditions. The department shall record the testimony at the hearing and, upon request, prepare a transcript. For purposes of this section, an immediate and significant threat to the fund means any of the following:

(i) A loss to the fund of at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(ii) Missing or fraudulent records associated with a claim or claims totaling at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(iii) A pattern of deceit, fraud, or intentional misconduct in carrying out the duties and responsibilities of a certificate holder during the six-month period immediately preceding the order of suspension.

(iv) At least three claims submitted for ineligible material in violation of this division, including, but not limited to, a violation of Section 14595.5, during the six-month period immediately preceding the order of suspension.

(B) An order of suspension or probation may be issued to any or all certified or registered facilities or programs operated by a person or entity that the department determines to be culpable or responsible for the loss or conduct identified pursuant to subparagraph (A).

(C) The order of suspension or issuance of a probationary certificate imposing terms or conditions shall become effective upon written notice of the order to the certificate holder or registrant. Within 20 days after

notice of the order of suspension, the department shall file an accusation seeking revocation of any or all certificates or registrations held by the certificate holder or registrant. The certificate holder or registrant may, upon receiving the notice of the order of suspension or probation, appeal the order by requesting a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing or appeal from an order of the department does not stay the action of the department for which the notice of the order is given. The department may combine hearings to appeal an order of suspension and a hearing for the proposed revocation of a certificate or registration into one proceeding.

(D) Nothing in this section shall prohibit the department from immediately revoking a probationary certificate pursuant to subdivision (b) of Section 14541 or from taking other disciplinary action pursuant to Section 14591.2.

SEC. 19. Section 14591.4 of the Public Resources Code is amended to read:

14591.4. (a) In addition to any other remedies, penalties, and disciplinary actions provided by this division or otherwise, the department may seek restitution of any money illegally paid to any person from the fund, plus interest at the rate earned on the Pooled Money Investment Account of the total amount.

(b) A certificate holder is liable to the department for restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2 for payments made by the department to the certificate holder that are based on improperly prepared or maintained documents, as specified in paragraph (7) of subdivision (b) of Section 14538 and paragraph (8) of subdivision (b) of Section 14539.

(c) If the department has a civil cause of action for restitution pursuant to subdivision (a) or (b), or if the department has a civil cause of action against a certificate holder or other responsible party for restitution under any other circumstance, the department may seek restitution in accordance with the following:

(1) For restitution of an amount of more than one thousand dollars ($1,000), the department shall proceed in a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing may take place at the same time as a hearing to impose disciplinary action on a certificate holder.

(2) For restitution of an amount of one thousand dollars ($1,000) or less, the department may use an informal hearing in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Notwithstanding subdivisions (b) and (c) of Section 14591.1, if the department collects amounts in full restitution for money paid, the

department may impose a penalty of not more than one hundred dollars ($100) for each separate violation, or for continuing violations, for each day that violation occurs.

SEC. 20. Section 14591.6 is added to the Public Resources Code, to read:

14591.6. (a) When a person is engaged in recycling activity that violates this division, any regulation adopted pursuant to this division, or an order issued under this division, the department may issue an order to that person to cease and desist from that activity.

(b) If a request for a hearing is filed in writing within 15 days of the date of service of the order described in subdivision (a), a hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If no written request for a hearing is filed within 15 days from the date of service of the order, the order shall be deemed the final order of the department and is not subject to review by any court or agency.

(c) Upon the failure of any person or persons to comply with any cease and desist order issued by the department, the Attorney General, upon request of the department, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person from continuing the activity in violation of the cease and desist order.

(d) The court shall issue an order directing defendants to appear before the court at a certain time and place and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be warranted.

SEC. 21. Section 14592 of the Public Resources Code is repealed.

SEC. 22. Section 14595 of the Public Resources Code is amended and renumbered to read:

14594.5. The department may assess upon any person, entity, or operation which redeems, attempts to redeem, or aids in the redemption of, empty beverage containers that have already been redeemed, a civil penalty of up to ten thousand dollars ($10,000) per transaction, or an amount equal to three times the damage or potential damage, whichever is greater, plus costs as provided in Section 14591.3, pursuant to 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.

SEC. 23. Chapter 8.5 (commencing with Section 14595) is added to Division 12.1 of the Public Resources Code, to read:

CHAPTER 8.5. REPORTING REQUIREMENTS AND PAYMENT PROHIBITIONS RELATED TO OUT-OF-STATE AND OTHER INELIGIBLE CONTAINERS

14595. The Legislature finds and declares that the redemption of beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage presents a significant threat to the integrity of the beverage container recycling program and fund. It is therefore the intent of the Legislature that no refund value or other recycling program payments be paid to any person for this material. It is further the intent of the Legislature that any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.

14595.4. For purposes of this chapter, the following definitions shall apply:

(a) ''Person'' means any individual, corporation, operation, or entity, whether or not certified or registered pursuant to this division.

(b) ''Refund value'' means, in addition to the definition in Section 14524, any payment by a certified recycler for beverage container material that is at least 15 percent more than the statewide average scrap value for that material type, as determined by the department for the month in which the payment was made, unless the department determines that a reasonable basis exists for that payment.

14595.5. (a) (1) No person shall pay, claim, or receive any refund value, processing payment, handling fee, or administrative fee for any of the following:

(A) Beverage container material that the person knew, or should have known, was imported from out of state.

(B) A previously redeemed container, rejected container, line breakage, or other ineligible material.

(2) No person shall, with intent to defraud, do any of the following:

(A) Redeem or attempt to redeem an out-of-state container, rejected container, line breakage, previously redeemed container, or other ineligible material.

(B) Return a previously redeemed container to the marketplace for redemption.

(C) Bring an out-of-state container, rejected container, line breakage, or other ineligible material to the marketplace for redemption.

(D) Receive, store, transport, distribute, or otherwise facilitate or aid in the redemption of a previously redeemed container, out-of-state container, rejected container, line breakage, or other ineligible material.

(b) For purposes of implementing subdivision (a), the department shall take all reasonable steps to exclude beverage container material imported from out of state, previously redeemed containers, rejected

containers, and line breakage, when conducting surveys to determine a commingled rate pursuant to Section 14549.5.

14596. (a) Any person importing more than 100 pounds of aluminum, bimetal, or plastic beverage container material, or more than 1,000 pounds of glass beverage container material, into the state, shall report the material to the department and provide the department with an opportunity for inspection, in accordance with the regulations adopted by the department.

(b) The department may impose civil penalties pursuant to Section 14591.1 or take disciplinary action pursuant to Section 14591.2 for a violation of this section.

14597. (a) No person shall falsify documents required pursuant to this division or pursuant to regulations adopted by the department. The falsification of these documents is evidence of intent to defraud and, for purposes of subdivision (b) of Section 14591.1, constitutes intentional misconduct. The department may also take disciplinary action pursuant to Section 14591.2 against a person who engages in falsification including, but not limited to, revocation of any certificate or registration.

(b) No person shall submit, or cause to be submitted, a fraudulent claim pursuant to this division. For purposes of this subdivision, a fraudulent claim is a claim based in whole or in part on false information or falsified documents. Any person who submits a fraudulent claim is subject to the assessment of penalties pursuant to subdivision (b) of Section 14591.1. The department may take action for full restitution for a fraudulent claim, pursuant to Section 14591.4, and may also take disciplinary action pursuant to Section 14591.2 including, but not limited to, revocation of any certificate or registration.

14599. The department may adopt emergency regulations to implement this chapter. 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 repealed by, the Office of Administrative Law, and shall remain in effect until revised by the director.

SEC. 24. The amendment to Section 14529.7 of the Public Resources Code by Section 4 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 25. (a) It is the intent of the Legislature that the Department of Conservation work with members of the recycling industry to identify any additional changes to the California Beverage Container Recycling and Litter Reduction Act that might be needed regarding enforcement of the act.

(b) On or before March 1, 2001, the Department of Conservation shall, after consulting with the recycling industry, submit a report to the Legislature as to any recommended changes to the California Beverage Container Recycling and Litter Reduction Act that are needed regarding enforcement of the act.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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 732

An act to amend Sections 25250.1, 25250.4, 25250.18, 25250.19, 25250.23, and 25250.24 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) ''Used oil'' means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities. Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and

bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(B) ''Used oil'' does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, ''de minimis quantities of used oil'' are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) ''Board'' means the California Integrated Waste Management Board.

(3) (A) ''Recycled oil'' means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

(III) The oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of Chapter 1 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) ''Used oil recycling facility'' means a facility that reprocesses or re-refines used oil.

(5) ''Used oil storage facility'' means a storage facility, as defined in subdivision (b) of Section 25123.3, that stores used oil.

(6) ''Used oil transfer facility'' means a transfer facility, as defined in subdivision (a) of Section 25123.3, that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas

zoned industrial by the local planning agency, or that transfers used oil from one container to another.

(7) (A) For purposes of this section and Section 25250.7 only, ''contaminated petroleum product'' means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D of Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

(b) Unless otherwise specified, used oil that meets either of the following conditions is not subject to regulation by the department:

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) shall maintain

an operating log and copies of certification forms, as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 2. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(a) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(b) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

SEC. 2.5. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(1) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(2) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279

(commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes of this section:

(1) ''Oil-filled electrical equipment'' includes, but is not limited to, transformers, circuit breakers, and capacitators.

(2) ''Restricted access electrical equipment area'' means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), ''filtered'' means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

SEC. 3. Section 25250.18 of the Health and Safety Code is amended to read:

25250.18. (a) Any person who transports recycled oil or oil exempted pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall maintain with each shipment a certification form, provided by the department, which contains all of the following information:

(1) The name and address of the used oil recycling facility or generator claiming the oil meets the requirements of Section 25250.1.

(2) The name and address of the facility receiving the shipment.

(3) The quantity of oil delivered.

(4) The date of shipment or delivery.

(5) A cross-reference to the records and documentation required under Section 25250.1.

(b) Certification forms required in subdivision (a) shall be maintained for three years and are subject to an audit and verification by the department or the board.

SEC. 4. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or any equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, all of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods remove or reduce the constituents or characteristics from the wastes accepted by the facility; and

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been

tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the board.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of any characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to any penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

SEC. 5. Section 25250.23 of the Health and Safety Code is amended to read:

25250.23. Any person who transports used oil shall register as a hazardous waste hauler and, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

SEC. 6. Section 25250.24 of the Health and Safety Code is amended to read:

25250.24. (a) Except as provided in subdivision (b), any person who generates, receives, stores, transfers, transports, treats, or recycles

used oil, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

(b) Used oil which is removed from a motor vehicle and which is subsequently recycled, by a recycler who is permitted pursuant to this article, shall not be included in the calculation of the amount of hazardous waste generated for purposes of the generator fee imposed pursuant to Section 25205.5.

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.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 25250.4 of the Health and Safety Code proposed by both this bill and AB 2573. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 25250.4 of the Health and Safety Code, and (3) this bill is enacted after AB 2573, in which case Section 2 of this bill shall not become operative.

CHAPTER 733

An act to amend Sections 100825, 100830, 100831, 100832, 100837, 100852, 100860, 100862, 100870, and 100872 of, and to add Section 100860.1 to, the Health and Safety Code, relating to environmental laboratories.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 100825 of the Health and Safety Code is amended to read:

100825. (a) Laboratories that perform, for regulatory purposes, analyses of drinking water, wastewater, air, hazardous wastes, and contaminated soils or sediments, or any combination of these, shall obtain a certificate pursuant to this article. Laboratories that perform analyses for pesticide residues in food pursuant to Section 110490 shall

obtain a certificate pursuant to this article. A laboratory may apply for NELAP accreditation in lieu of certification under this article if it chooses to meet NELAC standards for those fields of testing under Section 100862 that are in common with the two programs. Laboratories meeting the requirements of NELAP accreditation pursuant to this article shall become eligible for recognition by other states and agencies that require or accept NELAP accreditation.

(b) In any arrangement between laboratories that involves the transfer of samples or portions of samples, the analyzing laboratory shall be identified in all sample reports and shall be the laboratory for purposes of certification or NELAP accreditation.

(c) For the purposes of this article:

(1) ''Accreditation'' means the recognition of a laboratory that is approved by a NELAP approved accrediting authority to conduct environmental analyses in those fields of testing specifically designated in Section 100862.

(2) ''Approved third-party laboratory accreditation organization'' or ''ATPLAO'' means an organization which has been approved as a contractor under NELAC standards to assess environmental laboratories.

(3) ''Certificate'' means a document issued to a laboratory that has received certification or accreditation pursuant to this article.

(4) ''Certification'' means the granting of approval by the department to a laboratory that has met the standards and requirements of this chapter and the regulations adopted thereunder. Certification shall not include NELAP accreditation.

(5) ''Corrective action report'' means a written document signed by or on behalf of a person, entity, or laboratory which states the corrective actions proposed by the person, entity, or laboratory to correct the deficiencies or violations stated in a report of deficiencies.

(6) ''Deficiency'' means noncompliance with one or more of the requirements of this article or any rule or regulation adopted thereunder.

(7) ''ELAP'' means the State Department of Health Services' Environmental Laboratory Accreditation Program.

(8) ''Laboratory'' means any facility or vehicle that is owned by a person or persons, or by a public or private entity, and that is equipped and operated to carry out analyses in any of the fields of testing listed in Section 100860 or Section 100862.

(9) ''NELAC'' means the National Environmental Laboratory Accreditation Conference.

(10) ''NELAC standards'' refer to the standards found in EPA publication number 600/R-98/151, November 1998, and any subsequent amendments.

(11) ''NELAP'' means the National Environmental Laboratory Accreditation Program established by NELAC.

(12) ''NELAP accredited laboratory'' means a laboratory which has met the standards of NELAP and has been accredited by a primary or secondary NELAP recognized authority.

(13) ''NELAP approved accrediting authority'' means a state agency which is authorized by NELAC to accredit laboratories.

(14) ''NELAP recognized primary accrediting authority'' means a state agency which is responsible for the accreditation of environmental laboratories within that state.

(15) ''NELAP recognized secondary accrediting authority'' means a state agency which is authorized by NELAP to accredit environmental laboratories, within that state, which have been accredited by a NELAP approved accrediting authority in another state.

(16) ''Performance based measurement system'' or ''PBMS'' means methods which are alternate analytical methods of demonstrated adequacy of equivalence, as determined by the department, other state agencies, or the United States government.

(17) ''Pesticide'' means any substance that alone, in chemical combination, or in any formulation with one or more substances, is an ''economic poison'' within the meaning of Section 12753 of the Food and Agricultural Code or a ''pesticide'' as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(18) ''Regulatory agency'' means any federal, state, or local governmental agency that utilizes environmental analyses performed by a laboratory regulated under this section.

(19) ''Regulatory purposes'' means the use of laboratory analysis required by a regulatory governmental agency for determining compliance with this section or Chapter 1 (commencing with Section 116275), Chapter 2 (commencing with Section 116300), and Chapter 3 (commencing with Section 116350) of Part 11 of Division 104, Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20, or Division 7 (commencing with Section 13000) of the Water Code, or the regulations adopted under any of the provisions set forth in this paragraph.

SEC. 2. Section 100830 of the Health and Safety Code is amended to read:

100830. The department shall adopt regulations governing the administration and enforcement of this article. Regulations adopted by the department under this article shall specify conditions for recognizing on the basis of reciprocity the certification or NELAP accreditation of laboratories located outside of the State of California for activities regulated under this article by another state or by an agency of the United

States government. Certification by another jurisdiction may be recognized for purposes of this article with regard to one or several program activities, including, but not limited to, onsite inspections, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 3. Section 100831 of the Health and Safety Code is amended to read:

100831. NELAP accreditation by another jurisdiction shall be recognized, for purposes of this article, for the granting of accreditation by reciprocity.

SEC. 4. Section 100832 of the Health and Safety Code is amended to read:

100832. The department shall adopt or amend the regulations relating to environmental laboratories as necessary to enable California environmental laboratories to participate in the National Environmental Laboratory Accreditation Program.

SEC. 5. Section 100837 of the Health and Safety Code is amended to read:

100837. The department may contract with approved third-party laboratory accreditation organizations in accordance with the criteria developed by the National Environmental Laboratory Accreditation Conference or other federal agencies.

SEC. 6. Section 100852 of the Health and Safety Code is amended to read:

100852. (a) Notwithstanding any other provision of law, the department may issue a certificate to the owner of a laboratory in a field of testing or method adopted by the federal Environmental Protection Agency pursuant to Part 136 of Title 40 of the Code of Federal Regulations, as amended September 11, 1992, as published in the Federal Register (57 FR 41830), or Part 141 of Title 40 of the Code of Federal Regulations, as amended July 17, 1992, as published in the Federal Register (57 FR 31776), and as subsequently amended and published in the Federal Register.

(b) As a NELAP approved accreditating authority, the department shall accept performance based measurement system methods, when mandated methods are indicated. A fee, as specified in regulations adopted by the department, may be charged for the review of each performance based measurement system method.

(c) Notwithstanding any other provision of law, the department shall not be required to meet the requirements of Chapter 3.5 (commencing with Section 11340) of the Government Code in order to issue a certificate pursuant to subdivision (a).

SEC. 7. Section 100860 of the Health and Safety Code is amended to read:

100860. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an annual certification fee. The fee shall consist of a basic nonrefundable fee of eight hundred seventy-nine dollars ($879) and an additional fee of three hundred ninety-six dollars ($396) for certification in each of the following fields of testing for which accreditation is sought: (1) microbiology of drinking water and wastewater; (2) inorganic chemistry and physical properties of drinking water excluding toxic chemical elements; (3) analysis of toxic chemical elements in drinking water; (4) organic chemistry of drinking water (measurement by gc/ms combination); (5) organic chemistry of drinking water (excluding measurements by gc/ms combination); (6) radiochemistry; (7) shellfish sanitation; (8) aquatic toxicity bioassays; (9) physical properties testing of hazardous waste; (10) inorganic chemistry and toxic chemical elements of hazardous waste; (11) extraction tests of hazardous waste; (12) organic chemistry of hazardous waste (measurement by gc/ms combination); (13) organic chemistry of hazardous waste (excluding measurements by gc/ms combination); (14) bulk asbestos analysis; (15) substances regulated under the California Safe Drinking Water and Toxic Enforcement Act and not included in other listed groups; (16) wastewater inorganic chemistry, nutrients, and demand; (17) toxic chemical elements in wastewater; (18) organic chemistry of wastewater (measurements by gc/ms combination); (19) organic chemistry of wastewater (excluding measurements by gc/ms combination); (20) inorganic chemistry and toxic chemical elements of pesticide residues in food; (21) organic chemistry of pesticide residues in food (measurement by gc/ms combination); (22) organic chemistry of pesticide residues in food (excluding measurement by gc/ms combination); and (23) operation of a mobile laboratory in any one of the above fields of testing in addition to activity in the same field of testing in a certified stationary laboratory under the same owner.

Fees for certification in a specified field of testing may be refunded if the department nullifies the application due to failure by the laboratory to complete the application process in the time and manner prescribed by regulation.

(b) In addition to the payment of certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may provide for the waiver of certification fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the

nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

(e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).

(f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing (20), (21), or (22) under subdivision (a) shall pay the department a fee of four hundred dollars ($400) for the preparation and handling of each proficiency testing sample set.

(g) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(h) 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. 8. Section 100860.1 is added to the Health and Safety Code, to read:

100860.1. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an ELAP certification fee. This fee shall consist of a base or administrative fee and a fee for each of the ELAP fields of testing listed below for which the laboratory has requested ELAP certification. These fees shall be nonrefundable and adopted in regulations, and shall be sufficient to allow the ELAP program to be fully fee-supported. The fields of testing for ELAP certification and their code numbers are the following:

(E101) Microbiology of drinking water.
(E102) Inorganic chemistry of drinking water.
(E103) Toxic chemical elements of drinking water.
(E104) Volatile organic chemistry of drinking water.
(E105) Semi-volatile organic chemistry of drinking water.
(E106) Radiochemistry of drinking water.
(E107) Microbiology of wastewater.
(E108) Inorganic chemistry of wastewater.
(E109) Toxic chemical elements of wastewater.
(E110) Volatile organic chemistry of wastewater.
(E111) Semi-volatile organic chemistry of wastewater.

(E112) Radiochemistry of wastewater.

(E113) Whole effluent toxicity of wastewater.

(E114) Inorganic chemistry and toxic chemical elements of hazardous waste.

(E115) Extraction test of hazardous waste.

(E116) Volatile organic chemistry of hazardous waste.

(E117) Semi-volatile organic chemistry of hazardous waste.

(E118) Radiochemistry of hazardous waste.

(E119) Toxicity bioassay of hazardous waste.

(E120) Physical properties of hazardous waste.

(E121) Bulk asbestos analysis of hazardous waste.

(E122) Microbiology of food.

(E123) Inorganic chemistry and toxic chemical elements of pesticide residues in food.

(E124) Organic chemistry of pesticide residues in food (measurements by MS techniques).

(E125) Organic chemistry of pesticide residues in food (excluding measurements by MS techniques).

(E126) Microbiology of recreational water.

(E127) Air quality monitoring.

(E128) Shellfish sanitation.

(b) In addition to the payment of ELAP certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may provide for the waiver of certification fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

(e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).

(f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing for pesticide residues in food shall pay a fee directly to the designated proficiency testing provider for the cost of each proficiency testing sample set.

(g) In addition to the payment of certification fees, laboratories certified or applying for certification shall pay directly to the designated proficiency testing provider the cost of the proficiency testing study.

(h) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for

the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(i) This section shall become operative January 1, 2002.

SEC. 9. Section 100862 of the Health and Safety Code is amended to read:

100862. (a) At the time of application for NELAP accreditation and annually thereafter, from the date of the issuance of the accreditation, a laboratory shall pay a base fee and a fee for each of the NELAP fields of testing listed below for which a laboratory has requested NELAP accreditation. The fees shall be nonrefundable and set in regulations, and shall be sufficient to allow the NELAP program to be fully fee supported. The fields of testing for NELAP accreditation and their code numbers are all of the following:

(N101) Microbiology of drinking water.

(N102) Inorganic chemistry of drinking water.

(N103) Toxic chemical elements of drinking water.

(N104) Volatile organic chemistry of drinking water.

(N105) Semi-volatile organic chemistry of drinking water.

(N106) Radiochemistry of drinking water.

(N107) Microbiology of wastewater.

(N108) Inorganic chemistry of wastewater.

(N109) Toxic chemical elements of wastewater.

(N110) Volatile organic chemistry of wastewater.

(N111) Semi-volatile organic chemistry of wastewater.

(N112) Radiochemistry of wastewater.

(N113) Whole effluent toxicity of wastewater.

(N114) Inorganic chemistry and toxic chemical elements of hazardous waste.

(N115) Extraction test of hazardous waste.

(N116) Volatile organic chemistry of hazardous waste.

(N117) Semi-volatile organic chemistry of hazardous waste.

(N118) Radiochemistry of hazardous waste.

(N119) Toxicity bioassay of hazardous waste.

(N120) Physical properties of hazardous waste.

(N121) Bulk asbestos analysis of hazardous waste.

(b) Fees for NELAP accreditation shall be adjusted annually as specified in Section 100425.

(c) In addition to the payment of accreditation fees, laboratories accredited or applying for accreditation shall pay directly to the

designated proficiency testing provider the cost of the proficiency testing studies.

SEC. 10. Section 100870 of the Health and Safety Code is amended to read:

100870. (a) Any laboratory that is certified or holds NELAP accreditation or has applied for certification or NELAP accreditation or for renewal of certification or NELAP accreditation under this article, shall analyze proficiency testing samples. The department shall have the authority to contract with third parties for the provision of proficiency testing samples. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Proficiency testing sample sets shall be provided, when available, not less than twice, nor more than four times, a year to each certified laboratory that performs analyses of food for pesticide residues.

(b) The department may provide directly or indirectly proficiency testing samples to a laboratory for the purpose of determining compliance with this article with or without identifying the department.

(1) When the department identifies itself, all of the following shall apply:

(A) The results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory.

(B) There shall be no charge to the department for the analysis.

(2) When the department does not identify itself, the department shall pay the price requested by the laboratory for the analyses.

(c) If a certified or NELAP accredited laboratory submits proficiency testing sample results generated by another laboratory as its own, the certification or NELAP accreditation shall be immediately revoked.

(d) Laboratories shall obtain their proficiency testing samples from proficiency testing sample providers that are acceptable to, or are approved by, the federal government or the State Department of Health Services. Laboratories shall bear the cost of any proficiency testing study fee charged for participation. Each laboratory shall authorize the proficiency testing providers to report the study results directly to the accrediting authority and NELAP, as well as to the laboratory.

SEC. 11. Section 100872 of the Health and Safety Code is amended to read:

100872. (a) An ELAP certified laboratory shall successfully analyze proficiency testing samples for those fields of testing for which they are certified, not less than once a year, where applicable.

Proficiency testing procedures shall be approved by the United States government or by the department.

(b) A NELAP accredited laboratory shall participate in, and meet the success rate for, proficiency testing studies as required in the NELAP standards.

(c) The ELAP certified or NELAP accredited laboratory shall discontinue the analyses of samples for the fields of testing or subgroups which have been suspended for failure to comply with the proficiency testing requirements in this section.

CHAPTER 734

An act to amend Section 1 of Chapter 594 of the Statutes of 1917, relating to public trust lands, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. This act shall be known, and may be cited, as the Naval Air Station Alameda Public Trust Exchange Act.

SEC. 2. Section 1 of Chapter 594 of the Statutes of 1917 is amended to read:

Sec. 1. There is hereby granted to the City of Alameda (hereafter ''city''), a municipal corporation of the State of California, and to its successors, all the right, title, and interest of the State of California, held by the state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of the city, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay, or inlet within the boundaries, to be forever held by the city, and by its successors, in trust for the uses and purposes, and upon the following express conditions:

(a) The city shall be the public trust administrator for all lands granted to it pursuant to this act (hereafter ''granted lands''), and may use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control the lands and do all things necessary in connection with the lands that are in conformance with the terms of this act and the public trust for commerce, navigation, and fisheries.

(b) The granted lands shall be used by the city and its successors, solely for the establishment, improvement, and conduct of a harbor, and for the construction, maintenance, and operation thereon of wharves,

docks, piers, slips, quays, warehouses, factories, storehouses, equipment, parking areas, streets, highways, bridges, pedestrian ways, landscaped areas, public buildings, public assembly and meeting places, convention centers, parks, museums, playgrounds, public recreation facilities (including, without limitation, public golf courses, marinas, restaurants, hotels, commercial recreation facilities, entertainment facilities and attractions), and any other utilities, structures, and appliances, provided the facilities are incidental to, or necessary or convenient for, the promotion, benefit, and accommodation of the purposes of the public trust.

(c) The city, or its successors, may not grant, convey, give, or alienate the granted lands, or any part thereof, to any individual, firm, or corporation for any purpose, except as provided in this section or otherwise provided by the Legislature. This subdivision shall not be construed as prohibiting the conveyance of any lands within the former Naval Air Station Alameda, including lands previously granted to the city and subsequently transferred to the United States, to the Alameda Reuse and Redevelopment Authority (hereafter ''ARRA'') by the United States or the city, or as prohibiting the conveyance of any of those lands to the city by the United States or the ARRA.

(d) Notwithstanding the foregoing restriction on alienation, the city, or its successors, may grant franchises, permits, privileges, licenses, easements, or leasehold interests (hereafter collectively referred to as ''leases'') in connection with the lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which the lands are held by the State of California and this grant, for a term not exceeding 66 years. The city may establish other terms, conditions, and reservations in the leases, including a right to terminate with reversion to the city upon termination of any and all improvements thereon, as long as the terms, reservations, and conditions are consistent with the public trust and this act. The leases may include reservations for streets, sewer outlets, gas and oil mains, water systems, electric cables and wires, and other municipal purposes and uses deemed necessary by the city, upon compensation being made for the injury and damage done to any improvement or structure thereon.

(e) All moneys collected by the city arising out of the use or operation of any of the granted lands, including all revenues derived from leases or other rights to use or occupy the lands, shall be deposited into a special fund maintained by the city. The money in or belonging to the fund may be used only for uses and purposes consistent with the public trust for navigation, commerce, and fisheries, and the requirements of this act.

(f) The State of California shall have the right, together with the city if there is no lessee or licensee, or together with the lessee or licensee, if there is a lessee or licensee, to use, without charge, all wharves, docks,

piers, slips, quays, or other improvements constructed on the granted lands or any part thereof, for any vessel or other watercraft, or railroad, owned or operated by the State of California.

(g) No discrimination in rates, tolls, or charges for use or in facilities for any use or service in connection with wharves, docks, piers, slips, or quays, or property operated by the city, or property leased, the use of which is dedicated by the lessee or licensee for a public use, shall ever be made, authorized, or permitted.

(h) There is hereby reserved in the people of the State of California the right to fish in the waters on which the lands may front, with the right of convenient access to the waters over the lands for that purpose. The enjoyment of access and right to fish shall be regulated by ordinance of the city so as not to interfere, obstruct, retard, or limit the right of navigation or the rights of lessees or licensees under lease or license given.

(i) The state hereby reserves all subsurface mineral deposits, including oil and gas deposits, together with the right of ingress and egress on the granted lands for exploration, drilling, and extraction of mineral, oil, and gas deposits. Those mineral rights, including the right of ingress and egress, shall not be exercised in a manner that would disturb or otherwise interfere with any lease of or on the granted lands. However, any lease of property shall contain a provision specifying at least one point from which, and the manner in which, the right of ingress or egress to subsurface deposits may be exercised, which point or points may be outside the area of the lease, provided the point or points are adequate to permit the rights reserved to the state to be exercised.

(j) Nothing in this act shall impair or affect any rights or obligations arising from leases conferring the right to use, occupy, or conduct operations upon or within the granted lands, provided the leases were lawfully entered into, consistent with any applicable public trust or other restrictions on use, prior to the effective date of this act.

SEC. 3. The following definitions apply for purposes of this act.

(a) ''ARRA'' means the Alameda Reuse and Redevelopment Authority, a joint powers agency.

(b) ''City'' means the City of Alameda.

(c) ''Commission'' means the State Lands Commission.

(d) ''Granting act'' means Chapter 348 of the Statutes of 1913, an act entitled ''An act granting to the city of Alameda the salt marsh, tide and submerged lands of the State of California, including the right to wharf out therefrom to the city of Alameda, and regulating the management, use, and control thereof,'' approved June 11, 1913, as subsequently amended, modified, or augmented by Chapter 594 of the Statutes of 1917, Chapter 538 of the Statutes of 1927, Chapter 15 of the Statutes of 1953, Chapter 1028 of the Statutes of 1955, and this act.

(e) ''NAS Property'' means those parcels of land lying in the city and county of Alameda, State of California, and more particularly described as follows:

PARCEL 1, A parcel of land, forming a portion of that area commonly known as Naval Air Station Alameda, described as follows:

BEGINNING at a point on the United States Bulkhead Line, said point identified as Point ''K'' as said line and point are delineated and so designated upon that certain map entitled, ''Harbor Line Survey San Francisco Bay, 1910'' Sheet No. 6 originally filed in the United States Engineer's Office, Customs House, San Francisco and currently on file in the public records of Alameda County, said Bulkhead Line also being the northerly boundary of those lands acquired by the United States of America from Central Pacific Railway Company, et al as described in the final judgment of Civil Action No. 22463-S filed in the District Court of the United States in and for the Northern District of California, Southern Division on January 11, 1944;

1. Thence southeasterly along said Bulkhead Line and said northerly boundary to a point on the westerly boundary of Parcel 2 of those lands acquired by the War Department from the City of Alameda, California, by an act, H.R. 12661 Public, No. 514-7lst Congress approved July 3, 1930 (46 Stat. 857) and known as Benton Field as transferred from the War Department to the Navy Department by Executive Order No. 7467, dated October 7, 1936;

2. Thence northerly along the westerly boundary of said Parcel 2 to the northerly boundary line of the City of Alameda;

3. Thence easterly along said boundary of the City of Alameda and the northerly boundary of said Parcel 2 to the northeast corner of said Parcel 2 and the easterly boundary of the lands conveyed by Todd Shipyards Corporation to the United States of America by quitclaim deed recorded June 27, 1995, at series number 95140151 official records of Alameda County;

4. Thence southerly along last said easterly boundary to the most northerly corner of that certain parcel of land described as Parcel 1 of the lands acquired by the United States of America from the Regents of the University of California, a corporation, et al as described in Final Judgement of Civil Action No. 21988-S filed in the District Court of the United States in and for the Northern District of California, Southern Division on June 11, 1942, and the south line of Main Street;

5. Thence southerly along the easterly boundary of said Parcel 1 and said south line of Main Street and the westerly line of Main Street to the northeastern corner of the lands acquired by the United States of America from Louis M. MacDermot, et al as described in Final Judgement of Civil Action No. 23109-G filed in the District Court of the

United States in and for the Northern District of California, Southern Division December 12, 1944;

6. Thence continuing southerly along the western line of Main Street and the eastern boundary of the lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to the intersection with the south line of Pacific Avenue;

7. Thence leaving said western line of Main Street and continuing easterly along the eastern boundary of said lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to a point 65.00 feet westerly of and measured at right angles from said eastern line of Main Street as shown on that certain map entitled, ''Bay View Tract, Alameda, California'' filed in map Book 7 at Page 33, Official Records of Alameda County;

8. Thence running in a southerly direction along a line parallel with and 65.00 feet westerly of, and measured at right angles from said eastern line of Main Street and along the easterly boundary of said lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to the northeasterly corner of Lot 12 of Section 10, Township 2 South, Range 4 West as shown on that certain Map No. 2 of Salt Marsh and Tide Lands situate in the County of Alameda, in the State of California, dated 1871, G.F. Allardt, Engineer, prepared by order of the Board of Tide Land Commissioners;

9. Thence continuing southerly along the said easterly boundary of the lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G and the eastern line of said Lot 12 and Lot 21 of said Section 10 to the southeast corner of said Lot 21;

10. Thence northwesterly along the south line of said Lot 21 and the south line of Lots 22, 23, 10, and 9 of said Section 10 and the south line of Lot 16 of Section 9 as shown on said Map No. 2 to the most westerly corner of said Lot 16, said point also being corner #11 lying on the eastern boundary of the lands acquired by the War Department from the City of Alameda, California, by an act, H.R. 12661 Public, No. 514-71st Congress approved July 3, 1930 (46 Stat. 857) and known as Benton Field as transferred from the War Department to the Navy Department by Executive Order No. 7467, dated October 7, 1936, and also being the eastern boundary of land depicted and described on the map and metes and bounds description entitled, ''United States Naval Air Station Alameda, California,'' filed September 20, 1938, in Book 29 at Page 20 Official Records of Alameda County;

11. Thence southwesterly along last said eastern boundary to point No. 12 as shown on last said map and the boundary line between Alameda County and City and the City and County of San Francisco;

12. Thence northwesterly along the western boundary of the lands acquired by the War Department from the City of Alameda, California,

by an act, H.R. 12661 Public, No. 514-71st Congress approved July 3, 1930 (46 Stat. 857) and known as Benton Field as transferred from the War Department to the Navy Department by Executive Order No. 7467, dated October 7, 1936, and the western boundary of the lands acquired by the United States of America from the City of Alameda by grant deed filed November 26, 1937, in Book 3583 at Page 1, Official Records of Alameda County, also being the boundary line between Alameda County and City and the City and County of San Francisco, to the southeasterly corner of the land acquired by the United States of America from the City and County of San Francisco as described in Final Judgement of Civil Action No. 35276 filed in the District Court of the United States in and for the Northern District of California, Southern Division September 10, 1964;

13. Thence westerly along the southern boundary of last said land acquired by the United States of America from the City and County of San Francisco to the western boundary of last said land, last said boundary also being on the United States Pierhead line extending between stations 161 and 159 as said line is shown on that certain map entitled ''Department of the Army, Corps of Engineers, Office of the District Engineer, San Francisco, California, San Francisco Bay, California, Harbor Lines, Oakland-Alameda,'' dated February 13, 1948, Drawing No. 1-4-19;

14. Thence northerly along said western boundary of the land acquired by the United States of America from the City and County of San Francisco as described in Final Judgement of Civil Action No. 35276 to the boundary line between Alameda County and City and the City and County of San Francisco and the western boundary of said lands acquired by the United States of America from the City of Alameda by grant deed filed November 26, 1937, in Book 3583 at Page 1, Official Records of Alameda County;

15. Thence northerly along last said western boundary, also being the boundary line between Alameda County and City and the City and County of San Francisco, to a point on said United States Pierhead line as said line is shown on that certain map entitled ''Department of the Army, Corps of Engineers, Office of the District Engineer, San Francisco, California, San Francisco Bay, California, Harbor Lines, Oakland-Alameda,'' dated February 13, 1948, Drawing No. 1-4-19;

16. Thence in a northeasterly direction along the western boundary of said lands acquired by the United States of America from the City of Alameda by grant deed filed November 26, 1937, in Book 3583 at Page 1, Official Records of Alameda County and said United States Pierhead line to the most western corner of said lands acquired by the United States of America from Central Pacific Railway Company, et al as described in the Final Judgement of Civil Action No. 22463-S filed in

the District Court of the United States in and for the Northern District of California, Southern Division on January 11, 1944;

17. Thence northeasterly along the westerly line of said lands acquired by the United States of America from Central Pacific Railway Company, and along said United States Pierhead line to a point on the United States Bulkhead line as said line is delineated on that certain map entitled, ''Harbor Line Survey San Francisco Bay, 1910'' Sheet No. 6 originally filed in the United States Engineer's Office, Customs House, San Francisco and currently on file in the public records of Alameda County;

18. Thence easterly along said Bulkhead Line and the northerly boundary of said lands acquired by the United States of America from Central Pacific Railway Company, to the point of beginning.

EXCEPTING THEREFROM any portion of the above-described lands lying within the City and County of San Francisco.

PARCEL 2, A parcel of land, forming a portion of that area commonly known as Naval Air Station Alameda, bounded on the south by the United States Bulkhead Line as shown on the map entitled, ''Harbor Line Survey San Francisco Bay, 1910'' Sheet No. 6 originally filed in the United States Engineer's Office, Customs House, San Francisco, and currently on file in the public records of Alameda County, said Bulkhead Line also being the northerly boundary of those lands acquired by the United States of America from Central Pacific Railway Company, et al as described in the Final Judgement of Civil Action No. 22463-S filed in the District Court of the United States in and for the Northern District of California, Southern Division on January 11, 1944; on the east by the westerly boundary of those lands acquired by the War Department from the City of Alameda, California, by an act, H.R. 12661 Public, No. 514-71st Congress approved July 3, 1930 (46 Stat. 857) and known as Benton Field as transferred from the War Department to the Navy Department by Executive Order No. 7467, dated October 7, 1936; on the north by the northerly boundary of the City of Alameda, and on the west by the northeasterly prolongation of the westerly boundary of those lands acquired by the United States of America from Central Pacific Railway Company, et al as described in the Final Judgement of Civil Action No. 22463-S filed in the District Court of the United States in and for the Northern District of California, Southern Division on January 11, 1944, said westerly boundary also being the United States Pierhead line as shown on that certain map entitled Department of the Army, Corps of Engineers, Office of the District Engineer, San Francisco, California, San Francisco Bay, California Harbor Lines, Oakland-Alameda,'' dated February 13, 1948, Drawing No. 1-4-19 to the intersection of said prolongation with the northerly boundary of the City of Alameda.

PARCEL 3, The lands, forming a portion of that area commonly known as Naval Air Station Alameda, described in the lease between the

City of Alameda and the United States of America and filed with the Department of the Navy at document number NOy(R)-54077.

PARCEL 4, A parcel of land described as follows:

BEGINNING at the NE comer of Lot 12 of Section 10, T2S, R4W, as shown on that certain Map No. 2 of Salt Marsh and Tide Lands situate in the County of Alameda, State of California, dated 1871, G.F. Allardt, Engineer, prepared by order of the Board of Tide Land Commissioners;

1. Thence northerly along the northerly prolongation of the easterly line of said Lot 12 to the easterly right-of-way line of Central Avenue;

2. Thence northerly along the easterly right-of-way line of Central Avenue and the northerly prolongation to the northerly right-of-way line of Pacific Avenue;

3. Thence westerly along said northerly right-of-way line of Pacific Avenue to the easterly right-of-way line of Main Street;

4. Thence northerly along said easterly right-of-way line of Main Street to the southerly right-of-way line of Atlantic Avenue;

5. Thence easterly along said southerly right-of-way line of Atlantic Avenue to the southerly prolongation of the easterly line of the Southern Pacific Railroad Right of Way;

6. Thence northerly along said southerly prolongation and said easterly line of the Southern Pacific Railroad Right of Way and the northerly prolongation thereof to the southerly right-of-way of Singleton Avenue;

7. Thence westerly along said southerly right-of-way line of Singleton Avenue to a point on the easterly right-of-way line of said Main Street;

8. Thence northerly and westerly along said easterly right-of-way line of Main Street to the easterly boundary of said lands acquired by the War Department from the City of Alameda, California, by an act, H.R. 12661 Public, No. 514-71st Congress approved July 3, 1930 (46 Stat. 857) and known as Benton Field as transferred from the War Department to the Navy Department by Executive Order No. 7467, dated October 7, 1936, and the easterly boundary of the lands conveyed by Todd Shipyards Corporation to the United States of America by quitclaim deed recorded June 27, 1995, at series number 95140151 official records of Alameda County;

9. Thence southerly along last said easterly boundary to the most northerly corner of that certain parcel of land described as Parcel 1 of the lands acquired by the United States of America from the Regents of the University of California, a corporation, et al as described in Final Judgement of Civil Action No. 21988-S filed in the District Court of the United States in and for the Northern District of California, Southern Division on June 11, 1942 and the south line of Main Street;

10. Thence southerly along the easterly boundary of said Parcel 1 and said south line of Main Street and westerly line of Main Street to the

northeastern corner of the lands acquired by the United States of America from Louis M. MacDermot, et al as described in Final Judgement of Civil Action No. 23109-G filed in the District Court of the United States in and for the Northern District of California, Southern Division December 12, 1944;

11. Thence continuing southerly along the western line of Main Street and the eastern boundary of the lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to the intersection with the south line of Pacific Avenue;

12. Thence leaving said western line of Main Street and continuing easterly along the eastern boundary of said lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to a point 65.00 feet westerly of and measured at right angles from said eastern line of Main Street as shown on that certain map entitled, ''Bay View Tract, Alameda, California'' filed in Map Book 7 at Page 33, Official Records of Alameda County;

13. Thence running in a southerly direction along a line parallel with and 65.00 feet westerly of and measured at right angles from said eastern line of Main Street and along the easterly boundary of said lands acquired by the United States of America as described in Final Judgement of Civil Action No. 23109-G to the point of beginning.

(f) ''Public trust' or ''trust'' means the public trust for commerce, navigation, and fisheries.

SEC. 4. The Legislature hereby finds and declares as follows:

(a) The purpose of this act is to facilitate the productive reuse of the lands comprising the former Naval Air Station Alameda in a manner that will further the purposes of the public trust for commerce, navigation, and fisheries. To effectuate this purpose, this act approves, and authorizes the commission to carry out, an exchange of lands under which certain nontrust lands on the NAS property with substantial value for the public trust would be placed into the public trust, and certain other lands presently subject to the public trust but no longer useful for trust purposes would be freed from trust restrictions. This act also delegates to the ARRA and to the city, as specified in this act, the responsibility of administering the public trust on lands within the NAS property.

(b) In 1913, the state granted by legislative act certain tide and submerged lands to the city in trust for purposes of commerce, navigation, and fisheries and subject to the terms and conditions specified in that act. The original 1913 grant prohibited the alienation of the granted lands. In 1917, the grant was amended to allow the city to convey some or all of the granted lands to the United States for public purposes of the United States. Beginning in 1930, the city approved several transfers of portions of the granted lands to the United States Navy for purposes of constructing and operating what came to be known

as the Naval Air Station Alameda. Certain portions of the transferred tide and submerged lands were subsequently filled and reclaimed by the Navy in furtherance of its plan for development of a naval air station. The Navy also acquired lands for NAS Alameda that were historically uplands and thus not subject to the public trust. In addition, a portion of the NAS property was comprised of granted lands that remained under city ownership and were leased to the Navy. These lands continue to be subject to the public trust.

(c) In 1993, the Defense Base Closure and Realignment Commission recommended closure of Naval Air Station Alameda under the Defense Base Closure and Realignment Act of 1990, and the station was closed operationally in April of 1997. As authorized by federal law, the Navy is in the process of transferring certain portions of the NAS property under a no-cost Economic Development Conveyance to the ARRA, the local reuse authority for the NAS Alameda. At a future date, the ARRA may convey some or all of the transferred lands to the city. Another portion of the NAS property is planned to be transferred from the Navy to the United States Fish and Wildlife Service. All former and existing tide and submerged lands on the NAS property for which the public trust has not been terminated will be subject to the public trust upon their release from federal ownership. The portion of the NAS property owned by the city and formerly leased to the Navy will remain under city ownership subject to the public trust.

(d) The existing configuration of trust and nontrust lands on the NAS property is such that the purposes of the public trust cannot be fully realized. Certain filled and reclaimed tidelands on the NAS property have been cut off from access to navigable waters and are no longer needed or required for the promotion of the public trust, or any of the purposes set forth in the granting act. Other lands on the NAS property directly adjacent to the waterfront or otherwise of high value to the public trust are currently not subject to the public trust. Absent a trust exchange, substantial portions of the waterfront on the NAS property would be free of the public trust and could be cut off from public access, while certain nonwaterfront lands not useful for trust purposes would be restricted to trust-consistent uses.

(e) A trust exchange resulting in the configuration of trust lands substantially similar to that depicted on the diagram in Section 11 of this act maximizes the overall benefits to the trust, without interfering with trust uses or purposes. Following the exchange, all lands within the NAS property adjacent to the waterfront will be subject to the public trust. The lands that will be removed from the trust pursuant to the exchange have been cut off from navigable waters, constitute a relatively small portion of the granted lands, and are no longer needed or required for the promotion of the public trust. The commission shall ensure that the lands

added to the trust pursuant to the exchange are of equal or greater value than the lands taken out of the trust.

(f) The reuse of public trust lands on former military bases presents a number of challenges not normally faced in the public trust administration of active waterfronts. In the case of the NAS property, a number of buildings were constructed on former tidelands during the period of federal ownership, when the public trust was effectively in abeyance. Certain of these buildings, which are now in various stages of their useful lives, were built by the Navy for nontrust purposes. Where the buildings lie on lands that will be subject to the public trust following the exchange authorized by this act, the conversion of the lands underlying these buildings to trust uses should proceed in a manner that will enable the people of this state to benefit from the substantial investments made in the buildings without hindering the overall goal of preserving the public trust.

(g) An important element of the trust exchange is the north-south access corridor between the San Francisco Bay and the Oakland Estuary. The corridor serves as a direct physical and visual link between the two waterways. The roads and greenways within the corridor provide public access to and between the northern and southern waterfronts of the NAS property. This corridor should remain open to the public as an access way. In addition, a number of buildings constructed within the corridor during the period of federal ownership, which were built for nontrust purposes, retain substantial historic value as contributory structures to the Naval Air Station Alameda Historic District. The character of these buildings conveys a sense of the historic naval base and enhances the open-space experience at the base.

SEC. 5. (a) The Legislature hereby approves an exchange of public trust lands within the NAS property, whereby certain public trust lands that are not now useful for public trust purposes are conveyed free of the public trust and certain other lands that are not now public trust lands and that are useful for public trust purposes are made subject to the public trust, resulting in a configuration of trust lands that is substantially similar to that shown on the diagram in Section 11 of this act, provided the exchange complies with the requirements of this act. The exchange is consistent with, and furthers the purposes of, the public trust and the granting act.

(b) The commission is authorized to carry out an exchange of public trust lands within the NAS property, in accordance with the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include procedures for ensuring that lands are not exchanged into the trust until any necessary hazardous materials remediation for those

lands has been completed, and may include, if appropriate, procedures for completing the exchange in phases.

(c) The precise boundaries of the lands to be taken out of the trust and the lands to be put into the trust pursuant to the exchange shall be determined by the commission. The commission shall not approve the exchange of any trust lands unless and until all of the following occur:

(1) The commission finds that the configuration of trust lands on the NAS property upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 11 of this act, and includes all existing tide and submerged lands within the NAS property.

(2) The commission finds that, with respect to the trust exchange as finally configured and phased, the value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust.

(3) The commission finds that, with respect to the trust exchange as finally configured and phased, the lands to be taken out of the trust have been filled and reclaimed, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with trust uses and purposes.

(4) The exchange is approved by the entity or entities that, under the provisions of the granting act and this act, would be responsible for administering the public trust with respect to the lands to be exchanged into the trust, and those lands are accepted by such entity or entities subject to the public trust and the requirements of the granting act.

(d) The exchange authorized by this act is subject to additional conditions that the commission determines are necessary for the protection of the public trust. At a minimum, the commission shall establish conditions to ensure all of the following:

(1) Streets and other transportation facilities located on trust lands are designed to be compatible with the public trust.

(2) The north-south corridor described in subdivision (g) of Section 4 of this act functions as a public access corridor.

(3) Lands are not exchanged into the trust until any necessary hazardous materials remediation for those lands has been completed.

(e) All former or existing tide or submerged lands within the NAS property for which the public trust has not been terminated, either by express act of the Legislature or otherwise, and any lands exchanged into the trust pursuant to this act, shall be held, whether by the ARRA or by the city, subject to the public trust and the requirements of the granting act. Notwithstanding the provisions of the granting act, during any period in which those lands are held by the ARRA, the ARRA, rather

than the city, shall be the public trust administrator for the lands, and shall have the same powers, and be subject to the same requirements, as would the city under the granting act.

(f) Any lands exchanged out of the trust pursuant to this act shall be deemed free of the public trust and the requirements of the granting act.

(g) For purposes of effectuating the exchange authorized by this act, the commission is authorized to do the following:

(1) Receive and accept on behalf of the state any lands or interest in lands conveyed to the state by the ARRA or the city, including lands that are now and that will remain subject to the public trust.

(2) Convey to the ARRA or the city by patent all of the right, title, and interest of the state in lands that are to be free of the public trust upon completion of an exchange of lands as authorized by this act and as approved by the commission.

(3) Convey to the ARRA or the city by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust, the terms of this act, and the granting act upon completion of an exchange of lands as authorized by this act and as approved by the commission, subject to the terms, conditions, and reservations that the commission determines are necessary to meet the requirements of subdivisions (d) and (e).

SEC. 6. (a) (1) Notwithstanding the provisions of the granting act, the contributory historic buildings on the NAS property, commonly known as the Administration Building (Building 1), the Fire Station (Building 6), the Gatehouse (Building 30), and the Hangar (Building 39), may be used for any purpose, whether or not the purpose is itself consistent with the public trust or the uses permitted under the granting act, provided that both of the following are satisfied:

(A) Any remodel or reconstruction of the buildings is consistent with the Guide to Preserving the Character of the Naval Air Station Alameda Historic District, pursuant to the Memorandum of Agreement between the city, the Navy, and the State Historic Preservation Officer, as implemented by city resolution or ordinance.

(B) With respect to the Administration Building, the Fire Station, and the Gatehouse only, the buildings remain open and accessible to the public.

(2) If any of the buildings described in paragraph (1) of subdivision (a) are remodeled, renovated, or used in a manner that is inconsistent with the applicable conditions established by that paragraph as implemented by the exchange agreement, the building or buildings may continue to be used for any purpose for a period of 10 years from the commencement of the inconsistent remodel, renovation, or use, to allow for the amortization of tenant improvements. Thereafter, the building or

buildings shall be used in a manner consistent with the public trust and the granting act.

(3) If any of the buildings described in paragraph (1) of subdivision (a) are demolished, subsequent use of the land and any replacement structures shall be consistent with the public trust and the granting act.

(b) (1) Notwithstanding any provision of the granting act, existing buildings or structures on trust lands within the NAS property that were constructed for nontrust purposes during the period of federal ownership and are incapable of being devoted to public trust purposes may be used for other purposes for the remaining useful life of buildings or structures. The remaining useful life of the buildings commonly known as the Plating Shop (Building 32) and the Steam Plant (Building 10) shall be 24 years from the effective date of this act. The city and the commission, by agreement, shall establish the remaining useful life of all other buildings, and structures subject to this subdivision, either individually or by category, provided that in no case shall the useful life of any building or structure be deemed to extend less than 15 years or more than 40 years from the effective date of this act.

(2) The maintenance, repair, or, in the event of a flood, fire, or similar disaster, partial reconstruction of any of the existing buildings or structures described in paragraph (1), and any structural or other alterations necessary to bring the buildings or structures into compliance with applicable federal, state, and local health and safety standards, including, but not limited to, seismic upgrading, shall be permitted, provided the activities will not enlarge the footprint or the size of the shell of the buildings or structures.

SEC. 7. All moneys arising out of the use or operation of any lands on the NAS property subject to the public trust, including all revenues derived from leases, permits, franchises, privileges, licenses, easements, and rights to use or occupy the trust lands, collected by the public trust administrator responsible for the lands, shall be deposited into a special fund maintained by the trust administrator. The money in or belonging to the fund may be used only for uses and purposes consistent with the public trust for navigation, commerce, and fisheries, the granting act, and this act.

SEC. 8. If the city or ARRA receives title at a future date to any portion of (a) the lands within the NAS property that have been or are intended to be transferred by the Navy to the United States Fish and Wildlife Service, or (b) the lands at issue in City of Alameda v. Todd Shipyards Corporation (N.D. Cal. 1986) 632 F.Supp. 333, reconsideration denied, in part, reconsideration granted in part, City of Alameda v. Todd Shipyards Corporation (N.D. Cal. 1986) 635 F.Supp. 1447, the lands shall be held by the city or ARRA subject to the public

trust and the requirements of the granting act, subject to any applicable exceptions set forth in this act.

SEC. 9. Leases of any of the trust lands granted under the granting act may be entered into for uses other than those consistent with the public trust or requirements of the granting act if the city has made all of the following determinations:

(a) There is no immediate trust-related need for the property proposed to be leased.

(b) The proposed lease is of a duration of no more than five years and can be terminated in favor of trust uses as they arise.

(c) The proposed lease prohibits the construction of new structures or improvements on the subject property that could, as a practical matter, prevent or inhibit the property from being converted to any permissible trust use if it becomes necessary for the property to be converted to a trust use.

(d) The proposed use of the leased property will not interfere with commerce, navigation, fisheries, or any other existing trust uses or purposes.

SEC. 10. (a) The state reserves the right to amend, modify, or revoke any and all rights to the lands granted to the city under the granting act.

(b) For purposes of this section, the term ''bonds'' includes, without limitation, lease revenue bonds and other bonds, lease financing arrangements, and certificates of participation.

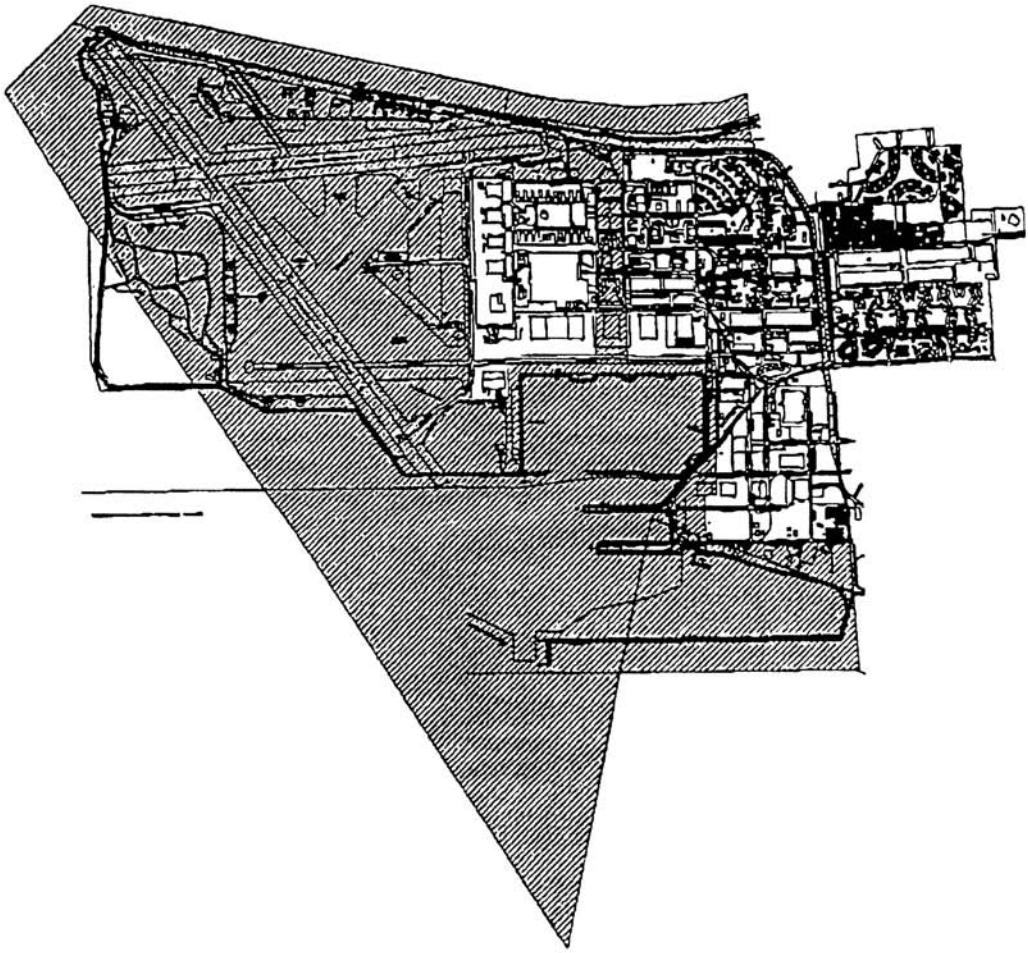
(c) No amendment, modification, or revocation, in whole or in part, of the grant in trust provided for in the granting act shall impair or affect the rights or obligations of third parties, including the holders of bonds or securities, lessees, lenders for value, and holders of contracts, conferring the right to the use or occupation of, or the right to conduct operations upon or within, the granted lands, arising from leases, contracts, or other instruments lawfully entered into prior to the effective date of the amendment, modification, or revocation.

(d) If, at the effective date of any such amendment, modification, or revocation, there are in effect any such leases, contracts, or other instruments, the state, at its option exercised by and through the commission, may succeed to the interest in any such instrument of the city; otherwise, the interest of the city in any instrument then in effect shall continue during the term or other period of time during which the instrument shall remain in effect. All bonds or securities issued by the city and payable out of revenues of the granted lands shall continue to be so payable, directly or indirectly, and secured in all respects as provided in the proceedings for their issuance, and the revenues of the property shall be pledged and applied to the payment of the bonds or

securities in all respects as though no amendment, modification, or revocation had taken place.

SEC. 11. The following diagram is a part of this act:

LOCATION OF LANDS SUBJECT
TO THE PUBLIC TRUST AND THE
GRANTING ACT UPON COMPLETION
OF THE EXCHANGE.



SEC. 12. The Legislature finds and declares that, because of the unique circumstances applicable only to the lands within the City of Alameda described in this act relating to the closure of Naval Air Station Alameda, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Proceedings leading to the transfer of the NAS property out of federal ownership are nearing completion. In the absence of the exchange authorized by this act, lands within the NAS property of high value to the public trust could be used and developed in a manner that is inconsistent with the public trust and that precludes future conversion to trust uses. In addition, certain of the lands that would be exchanged out of the public trust pursuant to the exchange authorized by this act are proposed to be used for nontrust purposes, the public benefits of which cannot be realized until the authorized exchange is undertaken. To prevent interference with the purposes of the public trust and to avoid prolonged delays in realizing the public benefits of the transfer of NAS Alameda, immediate implementation of the trust exchange process is required. Therefore, it is necessary that this act take effect immediately.

CHAPTER 735

An act relating to watershed protection.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) California has been implementing watershed protection programs pursuant to a number of state and federal programs and funding mechanisms.

(b) Collaborative efforts among federal, state, and local agencies, local stakeholder groups, landowners, and environmental groups are very important to the overall success of watershed protection programs.

(c) Voluntary watershed management programs can be an important means of achieving watershed protection and enhancement.

(d) California needs to evaluate how voluntary watershed programs can be structured to better coordinate and comply with the requirements of applicable federal, state, and local programs, statutes, and regulations so that voluntary watershed programs can become viable mechanisms for watershed protection and enhancement.

SEC. 2. (a) The California Stream and Watershed Protection Project is hereby established.

(b) The Secretary of the Resources Agency and the State Water Resources Control Board shall select three watershed protection projects from all qualified applications submitted to the board for the project pursuant to this section. The selected watershed protection projects shall be chosen from different geographic regions in the state.

(c) The projects selected shall be used to evaluate the existing collaborative and cooperative mechanisms between the Resources Agency and the entities within the agency, the Environmental Protection Agency and its boards, departments, and offices, federal agencies, local agencies, local stakeholder groups, landowners, and environmental groups, to determine whether the process can be streamlined for the preparation and implementation of comprehensive watershed management plans, including voluntary watershed management, that protect and improve water quality.

(d) In implementing this chapter, the Resources Agency and the State Water Resources Control Board shall focus on the coordination of various watershed management plan elements, including, but not necessarily limited to, watershed assessments, watershed planning, watershed monitoring, evaluation and adaptive management, funding, outreach, and education. Selected projects shall be consistent with the requirements of applicable federal and state statutes and regulations.

(e) The State Water Resources Control Board, in conjunction with the Resources Agency, shall also evaluate whether voluntary watershed management programs are an effective and viable mechanism for statewide watershed protection and enhancement.

(f) The Resources Agency and the Environmental Protection Agency shall jointly submit to the Legislature, on or before February 1, 2002, a report that evaluates the pilot projects and makes recommendations, including possible changes to state law, on how to improve the coordination among federal, state, and local agencies and other interested parties in the implementation of watershed protection programs. In addition, the report shall include all of the following information:

(1) The baseline status of the watershed before the project, incorporating available data involving water quality, geomorphological conditions, the presence of endangered species, and other baseline conditions of interest to the watershed community, the State Water

Resources Control Board, or the Resources Agency. The baseline status shall also include a description of the state of the watershed at the time the report is prepared, including a description of the science based standards used to choose and evaluate the watershed project.

(2) Whether a stakeholder process was used to implement the watershed program, and a description of how that process worked and suggestions for improving that process for future projects.

(3) Recommendations on whether a broad-based public advisory committee is needed to make recommendations on funding watershed projects based on principles of general scientific credibility, and whether a standardized process is necessary to select future projects.

CHAPTER 736

An act relating to watersheds.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The protection of California's watersheds is of critical importance in securing the economic and environmental future of the state. Watersheds provide water, California's most valuable commodity, which in turn sustains the engine of the state's agricultural, urban, and rural economies.

(b) California should facilitate and coordinate voluntary local watershed management and rehabilitation efforts to assure the most beneficial use of existing funding programs available for the purposes of watershed planning. Funding mechanisms that maintain and protect these investments in the future should be assessed, reviewed, considered, and continued.

(c) Substantial funding for watershed management has been made available to entities within California through various initiatives and legislative actions, yet minimal oversight exists to ensure that priority projects are funded, monitored for effectiveness, if required to be monitored, and that entities are held accountable for the accomplishment of projects.

(d) Because there is no organized list of financial resources available, many entities find it difficult to identify and apply for grants or other funding sources for watershed management within California. A need exists for a centralized list and report of watershed management funding

sources and a record of all federal, state, and private grants and of general obligation bond expenditures since 1995 documenting the entities that have received funds, the types of projects that have been funded, and an assessment whether watershed improvements were documented, if required to be documented. This report will provide a benchmark to assess whether there is a need to pursue additional funding sources for maintenance of past efforts and state watershed management and restoration needs for the future.

SEC. 2. (a) (1) The Secretary of the Resources Agency shall compile a report major funding sources made available for watershed projects in California since 1995. The report shall provide an analysis of major federal, state, and private grants and of general obligation bond expenditures since 1995, including the entities or types of entities that have received funds and the types of projects that have been funded, and an assessment regarding whether the results of the projects were quantified and documented, if those results were required to be documented. The analysis shall also include summaries of types of projects, recipients, performance measures and monitoring, if required, and recommended actions to improve the effectiveness of how watershed funds are administered, including identification of any funding gaps. The report shall also include all watershed management fund sources that are currently available to entities within California, along with a description of the process for applying for and the review of applications for grant or funding approval. To the extent feasible, the report shall also contain a list of individual project grant recipients, the project title, and the project location.

(2) The Secretary of the Resources Agency shall update the report described in paragraph (1) every three years.

(b) The completed report shall be available on the Internet and provided to the Assembly Natural Resources Committee, the Senate Natural Resources and Wildlife Committee, and the Governor not later than November 1, 2002. The updated reports shall be available on the Internet and provided to the committees described in this subdivision not later than November 1, 2005, and November 1 of every third year thereafter.

SEC. 3. This act shall become operative only if Assembly Bill 2117 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2001.

CHAPTER 737

An act to amend Sections 3203, 3205.2, 3206, 3208.1, 3226, 3236.5, 3237, 3352, and 3744 of, and to add Section 3219.5 to, the Public Resources Code, relating to oil and gas conservation, and making an appropriation therefor.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 3203 of the Public Resources Code is amended to read:

3203. (a) The operator of any well, before commencing the work of drilling the well, shall file with the supervisor or the district deputy a written notice of intention to commence drilling. Drilling shall not commence until approval is given by the supervisor or the district deputy. If the supervisor or the district deputy fails to give the operator written response to the notice within 10 working days from the date of receipt, that failure shall be considered as an approval of the notice and the notice, for the purposes and intents of this chapter, shall be deemed a written report of the supervisor. If operations have not commenced within one year of receipt of the notice, the notice shall be deemed canceled. The notice shall contain the pertinent data the supervisor requires on printed forms supplied by the division or on other forms acceptable to the supervisor. The supervisor may require other pertinent information to supplement the notice.

(b) After the completion of any well, this section also applies as far as may be, to the deepening or redrilling of the well, any operation involving the plugging of the well, or any operations permanently altering in any manner the casing of the well. The number or designation of any well, and the number or designation specified for any well in a notice filed as required by this section, shall not be changed without first obtaining a written consent of the supervisor.

(c) If an operator has failed to comply with an order of the supervisor, the supervisor may deny approval of proposed well operations until the operator brings its existing well operations into compliance with the order. If an operator has failed to pay a civil penalty, remedy a violation that it is required to remedy to the satisfaction of the supervisor pursuant to an order issued under Section 3236.5, or to pay any charges assessed under Article 7 (commencing with Section 3400), the supervisor may deny approval to the operator's proposed well operations until the operator pays the civil penalty, remedies the violation to the satisfaction

of the supervisor, or pays the charges assessed under Article 7 (commencing with Section 3400).

SEC. 2. Section 3205.2 of the Public Resources Code is amended to read:

3205.2. (a) Notwithstanding Section 3204, any person who engages in the operation of a class II commercial wastewater disposal well, as defined in subdivision (d), shall file an indemnity bond with the supervisor for fifty thousand dollars ($50,000) for each well so used. The bond shall cover all operations of drilling, redrilling, deepening, altering casing, maintaining, or abandoning the well and attendant facilities. The bond shall be executed by the person as the principal, and by an authorized surety company as the surety, and, except for differences in the amount, shall be in substantially the same language and upon the same conditions as provided in Section 3204.

(b) A blanket bond submitted under subdivision (a) or (c) of Section 3205 may be used in lieu of the bond required in subdivision (a), except that the termination and cancellation shall be in accordance with subdivision (c) of this section.

(c) Notwithstanding Section 3207, any bond issued in compliance with this section may be terminated and canceled and the surety relieved of all obligations thereunder when the well is properly abandoned or another valid bond has been substituted therefor.

(d) A class II commercial wastewater disposal well is a well that is used to dispose of oilfield wastewater for a fee and that is regulated by the division pursuant to this chapter and Subpart F (commencing with Section 147.250) of Part 147 of Title 40 of the Code of Federal Regulations.

SEC. 3. Section 3206 of the Public Resources Code is amended to read:

3206. (a) The operator of any idle well not covered by an indemnity bond provided under Section 3204, subdivision (c) of Section 3205, or subdivision (a) of Section 3205.2 shall do one of the following:

(1) File with the supervisor an annual fee for each idle well equal to the sum of the following amounts:

(A) One hundred dollars ($100) for each idle well that has been idle for less than 10 years.

(B) Two hundred fifty dollars ($250) for each idle well that has been idle for 10 years or longer, but less than 15 years.

(C) Five hundred dollars ($500) for each idle well that has been idle for 15 years or longer.

(2) Provide an escrow account in a federally insured bank that does business in, and has an office in, the State of California, by depositing the amount of five thousand dollars ($5,000) for each idle well, in the following manner:

(A) The escrow account shall be accessible only by the supervisor and the money shall be retained in the escrow account exclusively for use by the supervisor for plugging and abandoning the operator's idle wells that become deserted pursuant to Section 3237.

(B) The money in the escrow account may be released only by the supervisor and only in amounts covering any idle well that has properly been plugged and abandoned, returned to production or injection or converted to an active observation well, if that money remaining in the escrow account is sufficient to fully fund the required deposits for all of the operator's remaining idle wells.

(C) The required deposit for each idle well shall be funded completely within 10 years of the date the well becomes idle, or 10 years from January 1, 1999, for any well that is idle as of January 1, 1999.

(D) The operator shall fund the escrow account at the rate of at least five hundred dollars ($500) per well per year.

(E) Failure of an operator in any year to provide the minimum funding for any idle well shall result in the institution of the annual fees required by paragraph (1) for that idle well, and all money already on deposit for that idle well shall be treated as previously paid annual fees and shall be deposited into the Hazardous and Idle-Deserted Well Abatement Fund specified in subdivision (b) for expenditure pursuant to that subdivision.

(3) File with the supervisor an indemnity bond that provides the sum of five thousand dollars ($5,000) for each idle well. The bond shall be subject to the conditions provided in Section 3204.

(4) On or before July 1, 1999, file a plan with the supervisor to provide for the management and elimination of all long-term idle wells not covered under paragraph (1), (2), or (3).

(A) For the purposes of the plan required by this paragraph, elimination of an idle well shall be accomplished when the well meets the requirements of Section 3208.

(B) A plan filed pursuant to this paragraph shall meet all of the following requirements and conditions:

(i) The plan shall cover a time period of no more than 10 years and may be renewed annually thereafter, subject to approval by the supervisor.

(ii) The plan shall be reviewed for performance annually by the supervisor, and be subject to amendment with the approval of the supervisor.

(iii) The required rate of long-term idle well elimination shall be based upon the number of idle wells under the control of an operator on January 1 of each year, as specified in clause IV. The supervisor may require additional well testing requirements as part of the plan.

(iv) The plan shall require that operators with 10 or fewer idle wells eliminate at least one long-term idle well every two years; operators with

11 to 20, inclusive, idle wells eliminate at least one long-term idle well each year; operators with 21 to 50, inclusive, idle wells eliminate at least two long-term idle wells each year; operators with 51 to 100, inclusive, idle wells eliminate at least five long-term idle wells each year; operators with 101 to 250, inclusive, idle wells eliminate at least 10 long-term wells each year; and operators with more than 250 idle wells eliminate at least 4 percent of their long-term idle wells each year.

(v) An operator who complies with the plan is exempt from any increased idle well bond or fee requirements.

(vi) An operator who fails to comply with the plan, as determined by the supervisor after the annual performance review, is not eligible to use the requirements of this paragraph, for purposes of compliance with this section, for any of its idle wells. That operator shall immediately provide one of the alternatives in paragraph (1), (2), or (3) for its idle wells and may not propose a new idle well plan for the next five years. An operator may appeal to the director pursuant to Article 6 (commencing with Section 3350) regarding the supervisor's rejection of a plan and plan amendments and the supervisor's determinations of the operator's failure to comply with a plan.

(b) All fees received under this section shall be deposited in the Hazardous and Idle-Deserted Well Abatement Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the Hazardous and Idle-Deserted Well Abatement Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year, to mitigate a hazardous or potentially hazardous condition by well plugging and abandonment.

(c) Failure to file, for any well, the bond or fee required under this section shall be conclusive evidence of desertion of the well, permitting the supervisor to order the well abandoned.

(d) Nothing in this section prohibits a local agency from collecting a fee for regulation of wells.

SEC. 4. Section 3208.1 of the Public Resources Code is amended to read:

3208.1. (a) To prevent, as far as possible, damage to life, health, and property, the supervisor or district deputy may order the reabandonment of any previously abandoned well if the supervisor or the district deputy has reason to question the integrity of the previous abandonment.

The operator responsible for plugging and abandoning deserted wells under Section 3237 shall be responsible for the reabandonment except in the following situations:

(1) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and that the well in its current

condition presents no immediate danger to life, health, and property but requires additional work solely because the owner of the property on which the well is located proposes construction on the property that would prevent or impede access to the well for purposes of remedying a currently perceived future problem. In this situation, the owner of the property on which the well is located shall be responsible for the reabandonment.

(2) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and that construction over or near the well preventing or impeding access to it was begun on or after January 1, 1988, and the property owner, developer, or local agency permitting the construction failed either to obtain an opinion from the supervisor or district deputy as to whether the previously abandoned well is required to be reabandoned or to follow the advice of the supervisor or district deputy not to undertake the construction. In this situation, the owner of the property on which the well is located shall be responsible for the reabandonment.

(3) The supervisor finds that the operator plugged and abandoned the well in conformity with the requirements of this division in effect at the time of the plugging and abandonment and after that time someone other than the operator or an affiliate of the operator disturbed the integrity of the abandonment in the course of developing the property, and the supervisor is able to determine based on credible evidence, including circumstantial evidence, the party or parties responsible for disturbing the integrity of the abandonment. In this situation, the party or parties responsible for disturbing the integrity of the abandonment shall be responsible for the reabandonment.

(b) Except for the situations listed in paragraphs (1), (2), and (3) of subdivision (a), nothing in this section precludes the application of Article 4.2 (commencing with Section 3250) when its application would be appropriate.

SEC. 5. Section 3219.5 is added to the Public Resources Code, to read:

3219.5. (a) On or before July 1, 2001, the Department of Conservation shall report to the Governor and the Legislature on options for ensuring the existence of blowout insurance for persons engaged in drilling or redrilling exploratory oil and gas wells in areas where abnormally high or unknown subsurface pressure gradients exist. The report shall consider all of the following:

(1) Types of insurance policies, which include control of well policies and policies that cover personal injury and property damage resulting from a catastrophic well blowout occurrence.

(2) Methods of setting insurance policy amounts.

(3) Forms of insurance, including third-party insurance, provision of an operator's proof of ability to respond in damages, a combination thereof, or other options.

(4) Areas of the state where abnormally high pressure gradients exist, or where insufficient data exists to draw conclusions regarding the subsurface pressure gradient.

(5) Any other factors the department deems appropriate to include in the report.

(b) The Department of Conservation shall consult with representatives of the oil industry and insurers in developing the report's recommendations.

SEC. 6. Section 3226 of the Public Resources Code is amended to read:

3226. Within 30 days after service of an order pursuant to Sections 3224 and 3225, or Section 3237, or if there has been an appeal from the order to the director, within 30 days after service of the decision of the director, or if a review has been taken of the order of the director, within 10 days after affirmance of the order, the owner or operator shall commence in good faith the work ordered and continue it until completion. If the work has not been commenced and continued to completion, the supervisor may appoint necessary agents to enter the premises and perform the work. An accurate account of the expenditures shall be kept. Any amount so expended shall constitute a lien against real or personal property of the operator pursuant to the provisions of Section 3423.

Notwithstanding any other provisions of Section 3224, 3225, or 3237, if the supervisor determines that an emergency exists, the supervisor may order or undertake the actions he or she deems necessary to protect life, health, property, or natural resources.

SEC. 7. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) Any person who violates this chapter or any regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation. Acts of God, and acts of vandalism beyond the reasonable control of the operator, shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the

supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing need not be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

(b) Notwithstanding any other provision of this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well operations that are the subject of the civil penalty order is discontinued until the violation has been remedied to the satisfaction of the supervisor, and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the General Fund.

SEC. 8. Section 3237 of the Public Resources Code is amended to read:

3237. (a) (1) The supervisor or district deputy may order the plugging and abandonment of any well that has been deserted whether or not any damage is occurring or threatened by reason of that deserted well. The supervisor or district deputy shall determine from credible evidence whether a well is deserted.

(2) For purposes of paragraph (1), ''credible evidence'' includes, but is not limited to, the operational history of the well, the response or lack of response of the operator to inquiries and requests from the supervisor or district deputy, the extent of compliance by the operator with the requirements of this chapter, and other actions of the operator with regard to the well.

(3) A rebuttable presumption of desertion arises in any of the following situations:

(A) If a well has not been completed to production or injection and drilling machinery have been removed from the well site for at least six months.

(B) If a well's production or injection equipment has been removed from the well site for at least two years.

(C) If an operator has failed to comply with an order of the supervisor within the time provided by the order or has failed to challenge the order on a timely basis.

(D) If an operator fails to designate an agent as required by Section 3200.

(E) If a person who is to acquire a well that is subject to a purchase, transfer, assignment, conveyance, exchange, or other disposition fails to comply with Section 3202.

(F) If an operator has failed to maintain the access road to a well site passable to oilfield and emergency vehicles.

(4) The operator may rebut the presumptions of desertion set forth in paragraph (3) by demonstrating with credible evidence, compliance with the division and that the well has the potential for commercial production, including specific and detailed plans for future operations, and by providing a reasonable timetable for putting those plans into effect. The operator may rebut the presumption set forth in subparagraph (F) of paragraph (3) by repairing the access road.

(b) An order to plug and abandon a deserted well may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

(c) (1) The current operator, as determined by the records of the supervisor, of a deserted well that produced oil, gas, or other hydrocarbons or was used for injection is responsible for the proper plugging and abandonment of the well. If the supervisor determines that the current operator does not have the financial resources to fully cover the cost of plugging and abandoning the well, the immediately preceding operator shall be responsible for the cost of plugging and abandoning the well.

(2) The supervisor may continue to look seriatim to previous operators until an operator is found that the supervisor determines has the financial resources to cover the cost of plugging and abandoning the well. However, the supervisor may not hold an operator responsible that made a valid transfer of ownership of the well prior to January 1, 1996.

(3) For purposes of this subdivision, ''operator'' includes a mineral interest owner who shall be held jointly liable for the well if the mineral interest owner has or had leased or otherwise conveyed the working interest in the well to another person, if in the lease or other conveyance, the mineral interest owner retained a right to control the well operations that exceeds the scope of an interest customarily reserved in a lease or other conveyance in the event of a default.

(4) No prior operator shall be liable for any of the costs of plugging and abandoning a well by a subsequent operator if those costs are necessitated by the subsequent operator's illegal operation of a well.

(5) If the supervisor is unable to determine that an operator that acquired ownership of a well after January 1, 1996, has the financial resources to fully cover the costs of plugging and abandonment, the supervisor may undertake plugging and abandonment pursuant to Article 4.2 (commencing with Section 3250).

SEC. 9. Section 3352 of the Public Resources Code is amended to read:

3352. Within 10 days from the date of the taking of the appeal, a minimum 20 days notice in writing shall be given to the appellant of the time and place of the hearing. If the director determines that there is an immediate threat to human health and safety or to the environment, the director may shorten the notice period to 10 days. For good cause, and if the director determines that there is not an immediate threat, the director may postpone the hearing, on the application of the appellant, the supervisor, or the district deputy, for a period not to exceed 30 days.

SEC. 10. Section 3744 of the Public Resources Code is amended to read:

3744. (a) Within 30 days from the date of service of an order made pursuant to Section 3743, the operator shall commence in good faith the work ordered and continue it until completion. If the work has not been commenced and continued to completion, the supervisor may appoint necessary agents to enter the premises and perform the work. An accurate account of the expenditures shall be kept. Any amount so expended constitutes a lien against the real or personal property of the operator upon which the work is done and the lien has the force, effect, and priority of a judgment lien pursuant to Section 3772.

(b) Notwithstanding Section 3741, 3743, or 3755, if the supervisor determines that an emergency exists, the supervisor may make formal or emergency orders or undertake any other action that the supervisor determines to be necessary for the protection of life, health, property, or natural resources.

CHAPTER 738

An act to amend Sections 21080.4 and 21081.7 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 21080.4 of the Public Resources Code is amended to read:

21080.4. (a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, that request may also be made by the project applicant.

(d) With respect to the Department of Transportation, and with respect to any state agency that is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

SEC. 2. Section 21081.7 of the Public Resources Code is amended to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation when the project has impacts that are of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

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 739

An act to amend the heading of Part 3 (commencing with Section 1101), of Division 1 of, and to amend Sections 1101, 1102, 1103, and 1107 of, the Food and Agricultural Code, and to repeal Section 21083.2.5 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The heading of Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as added by Chapter 144 of the Statutes of 2000, is amended to read:

PART 3. AGRICULTURAL BIOMASS-TO-ENERGY INCENTIVE GRANT PROGRAM

SEC. 2. Section 1101 of the Food and Agricultural Code, as added by Chapter 144 of the Statutes of 2000, is amended to read:

1101. This part shall be known, and may be cited, as the Agricultural Biomass-to-Energy Incentive Grant Program.

SEC. 3. Section 1102 of the Food and Agricultural Code, as added by Chapter 144 of the Statutes of 2000, is amended to read:

1102. The Legislature finds and declares all of the following:

(a) California agriculture produces substantial quantities of residual materials from farming practices, including orchard and vineyard pruning and removals. These residual materials are disposed of primarily by open field burning, resulting in air emissions that would be substantially reduced if the residual materials instead were converted into energy at a biomass-to-energy facility.

(b) California's longstanding energy policy encourages a diversity of electrical power generation sources, including biomass-to-energy and renewables. Existing biomass-to-energy powerplants provide an important alternative use for agricultural residue materials as well as electrical power for the people of California.

(c) California seeks to improve environmental quality and sustain our natural resources, in part through various strategies and programs that reduce agricultural, rangeland, and forest burning, and programs that foster higher value uses for materials that otherwise would be managed as wastes. Air districts currently administer air quality permit and emission requirement provisions, under state law, for various types of project facilities, including those using agricultural residue products as biomass fuel to produce electrical energy.

(d) Additional incentives are necessary to reduce open field burning of agricultural residual materials that degrade air quality, to produce electrical power from a renewable source, and to foster and sustain the biomass industry, including collection, hauling, and processing infrastructure, and, therefore, the Legislature establishes the Agricultural Biomass-to-Energy Incentive Grant Program.

(e) The Legislature further finds and declares that providing the grants set forth under this program is in the public interest, serves a public purpose, and that providing incentives to facilities will promote the prosperity, health, safety, and welfare of the citizens of the State of California.

(f) It is also the intent of the Legislature to provide funding of thirty million dollars ($30,000,000) over the three-year duration of the grant program.

SEC. 4. Section 1103 of the Food and Agricultural Code, as added by Chapter 144 of the Statutes of 2000, is amended to read:

1103. For the purposes of this part, the following definitions apply:

(a) ''Agency'' means the Trade and Commerce Agency.

(b) ''Air district'' means an air pollution control district or an air quality management district established or continued in existence pursuant to Part 3 (commencing with Section 40000) of the Health and Safety Code.

(c) ''Facility'' means any California site that meets both of the following criteria:

(1) As of July 1, 2000, converted, and continues to convert, qualified agricultural biomass to energy and the conversion results in lower oxides of nitrogen (NO_x) emissions than would otherwise be produced if burned in the open field during the ozone season, as determined by the air district in which the site operates.

(2) Does not produce electricity for sale to a public utility pursuant to a contract with that public utility, or, if the site does produce electricity for sale to a public utility pursuant to a contract with that public utility, the site does not qualify for the fixed energy prices under the terms of that contract at the time the application for the grant is made.

(d) ''Grant'' means an award of funds by the agency to an air district that shall, in turn, grant incentive payments to a facility after deducting the air district's administrative fee as provided in Section 1104.

(e) ''Incentive payment'' means a payment by an air district to facilities for qualified agricultural biomass to be received and converted into energy after July 1, 2000. This payment shall be in the amount of ten dollars ($10) for each ton of qualified agricultural biomass received for conversion to energy.

(f) ''Qualified agricultural biomass'' means agricultural residues that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(1) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(2) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

SEC. 5. Section 1107 of the Food and Agricultural Code, as added by Chapter 144 of the Statutes of 2000, is amended to read:

1107. The multiagency review panel established pursuant to Section 1105 shall provide a report to the Legislature on the results and effectiveness of the Agricultural Biomass-to-Energy Incentive Program by January 1, 2003.

SEC. 6. Section 21083.2.5 of the Public Resources Code, as proposed to be added by Assembly Bill 2752 of the 1999–2000 Regular Session, is repealed.

SEC. 7. It is the intent of the Legislature that if this bill is chaptered after Assembly Bill 2752 of the 1999–2000 Regular Session, that the repeal of Section 21083.2.5 of the Public Resources Code by this bill prevail over the addition of that Section by Assembly Bill 2752.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make various changes to the Agricultural Biomass-to-Energy Incentive Grant Program as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 740

An act to repeal Section 12171 of the Public Contract Code, and to amend Sections 40912, 41770, 41780, 41821, 41821.1, 41821.5, 41825, and 41850 of, to amend, repeal, and add Section 41821.2 of, and to add Section 40977 to, the Public Resources Code, relating to recycling.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 12171 of the Public Contract Code is repealed.

SEC. 2. Section 40912 of the Public Resources Code is amended to read:

40912. (a) The board shall develop a model countywide or regional siting element and a model countywide or regional agency integrated waste management plan that will establish prototypes of the content and format that counties or regional agencies may use in meeting the requirements of this part.

(b) On or before July 1, 2001, the board shall develop a model revised source reduction and recycling element that will establish prototypes of the content and format of that element that cities, counties, regional agencies, or a city and county may use in meeting the requirements of this part.

(c) The board shall adopt a program to provide assistance to cities, counties, regional agencies, or a city and county in the development and

implementation of source reduction programs. The program shall include, but not be limited to, the following:

(1) The development of model source reduction programs and strategies that may be used at the local and regional level.

(2) Ongoing analysis of public and private sector source reduction programs that may be provided to cities, counties, regional agencies, and a city and county in order to assist them in complying with Article 3 (commencing with Section 41050) of Chapter 2 and Article 3 (commencing with Section 41350) of Chapter 3.

(3) Assistance to cities, counties, regional agencies, and a city and county in the development of source reduction programs for commercial and industrial generators of solid waste that include the development of source reduction strategies designed for specific types of commercial and industrial generators.

(d) The board shall, to the maximum extent feasible, utilizing existing resources, provide local jurisdictions and private businesses with information, tools, and mathematical models to assist with meeting or exceeding the 50-percent diversion requirement pursuant to Section 41780. The board shall act as a solid waste information clearinghouse.

SEC. 3. Section 40977 is added to the Public Resources Code, to read:

40977. A regional agency may authorize one district, as defined in subdivision (a) of Section 41821.2, to be included as a member of the regional agency.

SEC. 4. Section 41770 of the Public Resources Code is amended to read:

41770. (a) Each countywide or regional agency integrated waste management plan, and the elements thereof, shall be reviewed, revised, if necessary, and submitted to the board every five years in accordance with the schedule set forth under Chapter 7 (commencing with Section 41800).

(b) Any revisions to a countywide or regional agency integrated waste management plan, and the elements thereof, shall use a waste disposal characterization method that the board shall develop for the use of the city, county, city and county, or regional agency. The city, county, city and county, or regional agency shall conduct waste disposal characterization studies, as prescribed by the board, if it fails to meet the diversion requirements of Section 41780, at the time of the five-year revision of the source reduction and recycling element.

(c) The board may review and revise its regulations governing the contents of revised source reduction and recycling elements to reduce duplications in one or more components of these revised elements.

SEC. 5. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule which shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first and each subsequent revision of the element, the city or county shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these goals.

SEC. 6. Section 41821 of the Public Resources Code is amended to read:

41821. (a) (1) Each year following the board's approval of a city, county, or regional agency's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the city, county, or regional agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780.

(2) The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element, the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in population, economics, or other factors in complying with subdivision (c) of Section 41780.1.

(3) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element. The city, county, or regional agency may also include information about existing and new programs it is implementing that are not part of the original or modified source reduction and recycling element adopted by the jurisdiction and approved by the board to achieve the diversion requirements of Section 41780.

(4) If the jurisdiction has been granted a time extension by the board pursuant to Section 41820, the jurisdiction shall include a summary of progress made in meeting the source reduction and recycling element implementation schedule pursuant to paragraph (2) of subdivision (a) of

Section 41780 and complying with the jurisdiction's plan of correction, prior to the expiration of the time extension.

(5) If the jurisdiction has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 41785, the jurisdiction shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

(6) Other information relevant to compliance with Section 41780.

(c) A jurisdiction may also include, in the report required by this section, all of the following:

(1) Any factor that the jurisdiction believes would affect the accuracy of the estimated waste disposal reduction calculation provided in the report pursuant to paragraph (1) of subdivision (b) to accurately reflect the changes in the amount of solid waste that is actually disposed. The jurisdiction may include, but is not limited to including, all of the following factors:

(A) Whether the jurisdiction hosts a solid waste facility.

(B) The effects of self-hauled waste and construction and demolition waste.

(C) The original or subsequent base year calculation, the amount of orphan waste, and the waste disposal reduction adjustment methodology.

(2) Information regarding the programs the jurisdiction is undertaking to respond to the factors specified in paragraph (1), and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.

(3) An estimate that the jurisdiction believes reflects that jurisdiction's annual reduction or increase in the disposal of solid waste.

(d) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised.

(e) (1) The board shall adopt procedures for requiring additional information in a jurisdiction's annual report. The procedures shall require the board to notify a jurisdiction of any additional required information no later than 120 days after the board receives the report from the jurisdiction.

(2) Paragraph (1) does not prohibit the board from making additional requests for information in a timely manner. A jurisdiction receiving such a request for information shall respond in a timely manner.

(f) The board shall adopt procedures for conferring with a jurisdiction regarding the implementation of a diversion program or changes to a jurisdiction's calculation of its annual disposal reduction.

SEC. 7. Section 41821.1 of the Public Resources Code is amended to read:

41821.1. (a) Each year following the board's approval of a county or regional agency's siting element and summary plan, the county or regional agency shall submit a report to the board summarizing the adequacy of the siting element and summary plan. The report on the siting element shall discuss any changes in disposal capacity, disposal facilities, or any other relevant issues. The annual report shall be due on or before August 1 of the year following board approval of a county or regional agency's siting element and summary plan, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) The board shall adopt procedures that may authorize a jurisdiction to submit an abbreviated version of the report required pursuant to this section, if the board determines that the jurisdiction has met or exceeded the requirements of paragraph (2) of subdivision (a) of Section 41780 for the previous two years, and if the board determines that the jurisdiction has otherwise complied with this division for the previous five years.

SEC. 8. Section 41821.2 of the Public Resources Code is amended to read:

41821.2. (a) For the purposes of this section, ''district'' means a community service district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall provide the city, county, or regional agency in which it is located, information on the programs implemented by the district and the amount of waste disposed and diverted within the district. The board may adopt regulations pertaining to the format of the information to be provided and deadlines for supplying this information to the city, county, or regional agency so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

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

SEC. 9. Section 41821.2 is added to the Public Resources Code, to read:

41821.2. (a) For the purposes of this section, ''district'' means a community service district or sanitary district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall do all of the following:

(1) Comply with the source reduction and recycling element and the household hazardous waste element of the city, county, or regional agency in which the district is located, as required by the city, county, or regional agency. The city, county, or regional agency shall notify a district of any program that it is implementing or modifying when it annually submits a report to the board pursuant to Section 41821.

(2) Provide each city, county, or regional agency in which it is located, information on the programs implemented by the district, the amount of waste disposed and reported to the disposal tracking system pursuant to Section 41821.5 for each city, county, or regional agency, and the amount of waste diverted by the district for each city, county, or regional agency.

(c) The board may adopt regulations pertaining to the format of the information to be provided pursuant to paragraph (2) of subdivision (b) and deadlines for supplying this information to the city, county, or regional agency, so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

(d) A district is subject to the portion of a penalty imposed, pursuant to Section 41850, upon a city, county, or regional agency in which the district is located, that is in proportion to the district's responsibility for failure to implement that jurisdiction's source reduction and recycling element and household hazardous waste element, as determined by that city, county, or regional agency. The board shall not determine the proportion of a district's responsibility as part of its determination to impose penalties. The city, county, or regional agency shall provide the district with a written notice regarding the district's responsibility, including the basis for determining the district's proportional responsibility, and an opportunity for hearing before the city, county, or regional agency's governing body, before assessing the district a proportion of the penalty imposed by the board.

(e) A district may impose a fee in an amount sufficient to pay for the costs of complying with this section. The fees shall be assessed and collected in the same manner as the fees imposed pursuant to Sections 41901 and 41902.

(f) This section shall become operative on July 1, 2001.

SEC. 10. Section 41821.5 of the Public Resources Code is amended to read:

41821.5. (a) Disposal facility operators shall submit to counties information from periodic tracking surveys on the disposal tonnages by jurisdiction or region of origin that are disposed of at each disposal facility. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) Recycling and composting facilities shall submit periodic information to counties on the types and quantities of materials that are disposed of, sold to end users, or that are sold to exporters or transporters for sale outside of the state, by county of origin. When materials are sold or transferred by one recycling or composting facility to another, for other than an end use of the material or for export, the seller or transferror of the material shall inform the buyer or transferee of the county of origin of the materials. The reporting requirements of this subdivision do not apply to entities that sell the byproducts of a manufacturing process.

(c) Each county shall submit periodic reports to the cities within the county, to any regional agency of which it is a member agency, and to the board, on the amounts of solid waste disposed by jurisdiction or region of origin, as specified in subdivision (a), and on the categories and amounts of solid waste diverted to recycling and composting facilities within the county or region, as specified in subdivision (b).

(d) The board may adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to perform the periodic tracking surveys required by this section, and that provide a representative accounting of solid wastes that are handled, processed, or disposed. Those regulations or periodic tracking surveys approved by the board shall not impose an unreasonable burden on waste handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste.

(e) On or before January 1, 2002, the board shall submit a report to the Legislature that evaluates the implementation of this section. The report shall include, but not be limited to, all of the following:

(1) An evaluation of the accuracy of the disposal reporting system under differing circumstances.

(2) The status of implementation of the disposal reporting system at the local level by waste haulers, landfills, transfer station and material recovery operators, and local agencies.

(3) The need for modification of the disposal reporting system to improve accuracy.

(4) Recommendations for regulatory and statutory changes needed to address deficiencies in the disposal reporting system.

(5) Recommendations to improve implementation and to streamline the reporting system, including ways to assist agencies to meet the reporting and tracking requirements.

(f) The board shall convene a working group composed of representatives of stakeholder groups, including, but not limited to, cities, counties, regional agencies, the solid waste industry, recyclers, and environmental organizations, to assist the board in preparing the report required pursuant to subdivision (e).

SEC. 11. Section 41825 of the Public Resources Code is amended to read:

41825. (a) At least once every two years, the board shall review each city, county, or regional agency source reduction and recycling element and household hazardous waste element.

(b) If after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance. The compliance order shall include those conditions that the board determines to be necessary for the local agency or regional agency to complete in order to implement its source reduction and recycling element or household hazardous waste element.

(c) (1) The board shall confer with a jurisdiction regarding conditions relating to a proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) Proposed actions that board staff recommends are necessary for the jurisdiction to complete in order to implement its source reduction and recycling element or household hazardous waste element.

(C) Proposed staff recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal reduction.

SEC. 12. Section 41850 of the Public Resources Code is amended to read:

41850. (a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the city, county, or regional agency has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars ($10,000) per day until the city, county, or regional agency implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 that results in a reduction in the quantity of solid waste diverted by a city, county, or regional agency, the board shall consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. In addition, the board shall consider only those relevant circumstances that have prevented a city, county, or regional agency from meeting the requirements of this division, including the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency that could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages that directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(4) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.

(c) In addition to the factors specified in subdivision (b), the board shall consider all of the following:

(1) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(2) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820, or an alternative requirement to Section 41780, pursuant to Section 41785.

(d) (1) For the purposes of this section, ''good faith effort'' means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section ''good faith effort'' may also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, provided that the city, county, or regional agency has submitted a compliance schedule pursuant to Section 41825, and has made all other reasonable and feasible efforts to implement the programs identified in its source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 741

An act to add Sections 41514.9 and 41514.10 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) Distributed generation can contribute to helping California meet the energy requirements of its citizens and businesses.

(b) Certain distributed generation technologies can create significant air emissions.

(c) A clear set of rules and regulations regarding the air quality impacts of distributed generation will facilitate the deployment of distributed generation.

(d) The absence of clear rules and regulations creates uncertainty that may hinder the deployment of distributed generation.

(e) It is in the public interest to encourage the deployment of distributed generation technology in a way that has a positive effect on air quality.

(f) It is the intent of the Legislature to create a streamlined and seamless regulatory program, whereby each distributed generation unit is either certified by the State Air Resources Board for use or subject to the permitting authority of a district.

SEC. 2. Section 41514.9 is added to the Health and Safety Code, to read:

41514.9. (a) On or before January 1, 2003, the state board shall adopt a certification program and uniform emission standards for electrical generation technologies that are exempt from district permitting requirements.

(b) The emission standards for electrical generation technologies shall reflect the best performance achieved in practice by existing electrical generation technologies for the electrical generation technologies referenced in subdivision (a) and, by the earliest practicable date, shall be made equivalent to the level determined by the state board to be the best available control technology for permitted central station powerplants in California. The emission standards for state certified electrical generation technology shall be expressed in pounds per megawatt hour to reflect the expected actual emissions per unit of electricity and heat provided to the consumer from each permitted central powerplant as compared to each state certified electrical generation technology.

(c) Commencing on January 1, 2003, all electrical generation technologies shall be certified by the state board or permitted by a district prior to use or operation in the state. This section does not preclude a district from establishing more stringent emission standards for electrical generation technologies than those adopted by the state board.

(d) The state board may establish a schedule of fees for purposes of this section to be assessed on persons seeking certification as a distributed generator. The fees charged, in the aggregate, shall not exceed the reasonable cost to the state board of administering the certification program.

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

(1) ''Best available control technology'' has the same meaning as defined in Section 40405.

(2) ''Distributed generation'' means electric generation located near the place of use.

SEC. 3. Section 41514.10 is added to the Health and Safety Code, to read:

41514.10. On or before January 1, 2003, the state board shall issue guidance to districts on the permitting or certification of electrical

generation technologies under the districts regulatory jurisdiction. The guidance shall address best available control technology determinations, as defined by Section 40405, for electrical generation technologies and, by the earliest practicable date, shall make those equivalent to the level determined by the state board to be the best available control technology for permitted central station powerplants in California. The guidance shall also address methods for streamlining the permitting and approval of electrical generation units, including the potential for precertification of one or more types of electrical generation technologies.

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 742

An act to add Part 2.5 (commencing with Section 71100) to Division 34 of the Public Resources Code, relating to environmental protection.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Part 2.5 (commencing with Section 71100) is added to Division 34 of the Public Resources Code, to read:

PART 2.5. ENVIRONMENTAL AND PUBLIC HEALTH PROTECTION AT THE CALIFORNIA-MEXICO BORDER

71100. The following definitions govern the construction of this part:

(a) ''Cal BECC'' means the California Border Environmental Cooperation Committee established on July 22, 1994, by the Governors of California, Baja California, and Baja California Sur.

(b) ''California-Baja California border region'' means the region described in Chapter IV of the US-Mexico Border XXI Program, Framework Document, published October 1996.

(c) ''Fund'' means the California Border Environmental Education Fund established pursuant to Section 71101.

71101. (a) The California Border Environmental and Public Health Protection Fund is hereby established in the State Treasury to receive funds appropriated in the annual Budget Act, and other sources, such as from North American Development Bank, Border Environment Cooperation Committee, United States Environmental Protection Agency, and private businesses or foundations, and any interest accrued on those funds.

(b) The money in the fund shall be available, upon appropriation, to the Secretary of Environmental Protection, for allocation for expenditure for the purposes of this part.

(c) The money in the fund shall not be made available for the purpose of bringing a person or a facility into compliance with environmental laws, or to provide funds to remediate environmental damage. The fund, instead, shall assist appropriate responsible agencies in California and Baja California in the implementation of projects to identify and resolve environmental and public health problems that directly threaten the health or environmental quality of California residents or sensitive natural resources of the California border region, including projects related to domestic and industrial wastewater, vehicle and industrial air emissions, hazardous waste transport and disposal, human and ecological risk, and disposal of municipal solid waste.

71102. The money in the fund shall be used for the following purposes: (a) To assist local governments in implementation of projects to identify and resolve environmental and public health problems that directly threaten the health or environmental quality of California residents or sensitive natural resources of the California border region, including projects related to domestic and industrial wastewater, vehicle and industrial air emissions, hazardous waste transport and disposal, human and ecological risks, and disposal of municipal solid waste.

(b) To provide technical assistance to those persons and entities described in subdivision (a) with regard to environmental protection, public health protection, or natural resource protection.

(c) To provide limited funds for equipment and labor costs associated with emergency abatement of environmental and public health problems imposed on residents of California due to cross-border impacts of pollutants originating from Baja California.

(d) To provide analytical and scientific equipment and services needed by border area public agencies to identify and monitor the sources of environmental and public health threats posed by cross-border transmission of environmental pollutants and toxics.

71103. (a) The Secretary for Environmental Protection, upon request, shall inform any community-based nonprofit environmental

organization, responsible local government, and special district located within the California-Baja California border region that it may request funding pursuant to Section 71102.

(b) The Secretary for Environmental Protection, in consultation with Cal BECC, shall award grants to a local governmental entity or special district, community-based nonprofit environmental organization, or postsecondary educational institution based on the severity of the environmental, public health, or natural resource concerns due to cross-border transmission of environmental pollutants or toxics to the city or county in which the entity, organization, or institution is located. First priority for funding shall be given to an entity, organization, or institution located in a city or county in which an environmental, public health, or natural resource threat exists and that has existing capability to respond to, implement, and abate the threat to California from cross-border sources.

(c) The Secretary for Environmental Protection, on behalf of Cal BECC, shall accept donations of used equipment, including computers, printers, and lab equipment, for distribution to governmental entities and community-based nonprofit environmental organizations located within the California-Baja California border region and postsecondary educational institutions located within Baja California and within the California-Baja California border region, if the donations can be shown to contribute to the protection of the environment, public health, or natural resources of the California border region.

71104. This part shall only be operative during those fiscal years for which funds are appropriated in the annual Budget Act to implement this part, or are made available from contributions or donations from the sources identified in Section 71101. The Secretary for Environmental Protection shall inform the Secretary of State when funds are made available from contributions or donations from the sources identified in Section 71101.

CHAPTER 743

An act to amend Sections 52122 and 52123 of the Education Code, relating to class size reduction.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 52122 of the Education Code is amended to read:

52122. (a) Except as otherwise provided by Section 52123, any school district that maintains any kindergarten or any of grades 1 to 3, inclusive, may apply to the Superintendent of Public Instruction for an apportionment to implement a class size reduction program in that school district in kindergarten and any of the grades designated in this chapter.

(b) An application submitted pursuant to this chapter shall identify both of the following:

(1) Each class that will participate in the Class Size Reduction Program.

(2) For each class that will participate in the Class Size Reduction Program, whether that class will operate under Option One or Option Two:

(A) (i) Option One: A school district shall provide a reduced class size for all pupils in each classroom for the full regular schoolday in each grade level for which funding is claimed. For the purposes of this chapter, ''full regular schoolday'' means a substantial majority of the instructional minutes per day, but shall permit limited periods of time during which pupils are brought together for a particular phase of education in groups that are larger than 20 pupils per certificated teacher. It is the intent of the Legislature that those limited periods of time be kept to a minimum and that instruction in reading and mathematics not be delivered during those limited periods of time. For the purposes of this subparagraph, ''class'' is defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction in classrooms where there are not more than 20 pupils. Except as provided in subdivision (h), in order to qualify for funding pursuant to this chapter, each class in the Class Size Reduction Program shall be maintained with an annual average class size of not more than 20 pupils for the instructional time that qualifies the class for funding pursuant to this chapter. Nothing in this chapter shall be construed to prohibit the class size from exceeding 20 pupils on any particular day, provided that the average class size for the school year does not exceed 20.

(B) (i) Option Two: A school district shall provide a reduced class size for all pupils in each classroom for at least one-half of the

instructional minutes offered per day in each grade level for which funding is claimed. School districts selecting this option shall primarily devote those instructional minutes to the subject areas of reading and mathematics. For the purposes of this subparagraph, ''class'' is defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction in classrooms where there are not more than 20 pupils. Except as provided in subdivision (h), in order to qualify for funding pursuant to this chapter, each class in the Class Size Reduction Program shall be maintained with an annual average class size of not more than 20 pupils for the instructional time that qualifies the class for funding pursuant to this chapter. Nothing in this chapter shall be construed to prohibit the class size from exceeding 20 pupils on any particular day, provided that the average class size for the school year does not exceed 20.

(c) A school district that intends to implement a class size reduction program for the 1996–97 school year shall submit an application for funds pursuant to this chapter to the Superintendent of Public Instruction not later than November 1, 1996. To receive the total amount of funding in the 1996–97 school year for which the school district is eligible pursuant to Section 52126, a school district shall implement the Class Size Reduction Program by February 16, 1997, within the meaning of paragraph (2) of subdivision (b).

(d) A school district that intends to implement or continue to implement a class size reduction program for the 1997–98 school year and any subsequent school year shall submit an application for funding pursuant to this chapter to the Superintendent of Public Instruction not later than 90 days after the annual Budget Act is chaptered, unless otherwise specified in regulations adopted by the State Board of Education.

(e) For the 1997–98 school year, a school district that is either implementing or expanding a class size reduction program pursuant to this chapter may receive funding pursuant to this chapter even if the new classes for which funding is sought are not implemented at the beginning of the 1997–98 school year, provided that, for each new class in the Class Size Reduction Program, all of the following criteria are met:

(1) The teacher for each new class is hired and placed on the school district's payroll by November 1, 1997.

(2) Each teacher for a new class has begun to receive the training required by this chapter on or before February 16, 1998.

(3) All other requirements of this chapter are satisfied by February 16, 1998, and continue to be satisfied for the remainder of the 1997–98 school year.

(f) For the 1997–98 school year, the number of new classes in the Class Size Reduction Program is the number of classes satisfying the requirements of this chapter minus the number of classes funded in the Class Size Reduction Program pursuant to this chapter in the 1996–97 school year.

(g) Any school district that chooses to reduce class size through the use of an early-late instructional program is ineligible to also use Section 46205, relating to the computation of instructional time for purposes of the Incentive for Longer Instructional Day and Year, in any grade level for which class size reduction funding is received pursuant to this chapter; provided, however, that any school district that operated under Section 46205 prior to July 1, 1996, may receive class size reduction funding pursuant to Option One in any grade level for which class size reduction funding would otherwise be received pursuant to Option One.

(h) (1) Notwithstanding any other provision of law, a school district that maintains only one school serving pupils in kindergarten and grades 1 to 3, inclusive, is eligible to receive funding under this section on behalf of the school if there are no more than two classes per participating grade level and the average class size is no more than 20 pupils in each of the classes participating in class size reduction at that schoolsite. For purposes of this subdivision, average class size may be determined by calculating the total number of pupils enrolled in all classes at all grade levels in a school that will participate in the Class Size Reduction Program divided by the total number of classes in the school. The ratio of pupils to teacher in any class included in the average shall not exceed the 20 to 1 standard by more than two pupils.

(2) As a condition of applying for funding under this subdivision, a governing board shall make a public declaration, either by adopting a resolution or by issuing a statement in a publicly noticed open meeting, that it has exhausted all possible alternatives to averaging and is unable to achieve the 20 to 1 pupil-teacher ratio in a way that is educationally acceptable.

SEC. 2. Section 52123 of the Education Code is amended to read:

52123. A school district's application for funding to implement a program pursuant to this chapter shall include the district's certification of each of the following items as a condition to receiving any apportionment under Section 52126:

(a) Certification of the number of classes in each eligible grade level selected for a class size reduction apportionment pursuant to this chapter.

(b) Certification of pupil enrollment, as of October of the previous calendar year, in each class selected for class size reduction pursuant to

subdivision (a). Classes comprised of special education pupils enrolled in special day classes on a full-time basis shall not be included in this program. School districts may not claim funding pursuant to this chapter for any pupil who is enrolled in independent study pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for the full regular schoolday nor may school districts claim funding pursuant to this chapter for any pupil for any portion of the full regular day that the pupil is enrolled in independent study pursuant to that article. Charter schools may not claim funding pursuant to this chapter for any pupil who is enrolled in a program of home study for the full regular schoolday nor may charter schools claim funding for any pupil for any portion of the full regular schoolday that the pupil is enrolled in a program of home study.

(c) (1) Except as provided in paragraph (2), certification that a certificated teacher has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter and that there are not more than 20 pupils per each class.

(2) In a school district that applies for funding pursuant to subdivision (h) of Section 52122, certification of all of the following:

(A) A certificated teacher has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter.

(B) The ratio of pupils to teacher does not exceed the 20 to 1 standard ratio by more than two pupils.

(3) For the purposes of this subdivision, ''class'' shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(d) Certification that the school district has a staff development program pursuant to Section 52127 and that the program has been approved by the governing board of the school district.

(e) Certification that the school district will collect and maintain any data required by the Superintendent of Public Instruction that will aid in the evaluation of the Class Size Reduction Program. The data shall include, but not be limited to, individual test scores or other records of pupil achievement. Any data collected shall be protected in a manner that will not permit the personal identification of any pupil or parent.

(f) Commencing with the 1998–99 school year and each school year thereafter, certification that each class reduced pursuant to this chapter is housed in either a separate, self-contained classroom or that the space of each class for each grade level at that schoolsite provides a square footage per pupil enrolled in each class that is not less than the average

square footage per pupil enrolled in those grade levels at that schoolsite in the 1995–96 school year.

CHAPTER 744

An act relating to reading training, and making an appropriation therefor.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

On this date I have signed Assembly Bill No. 886 with a reduction.

This bill would appropriate $600,000 to fund reading training programs: $500,000 for the Oakland Unified School District and $100,000 for the Lakeside Union Elementary School District.

However, there are three school districts in California with the name ''Lakeside Union Elementary School District,'' and it is unclear which of these districts would receive the funding. I am therefore deleting the $100,000 appropriation from the bill.

GRAY DAVIS, Governor

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

SECTION 1. (a) The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction to fund reading training programs, to be allocated as follows:

(b) Five hundred thousand dollars ($500,000) to the Oakland Unified School District.

(c) One hundred thousand dollars ($100,000) to the Lakeside Union Elementary School District.

SEC. 2. Due to the unique circumstances concerning the Oakland Unified School District and the Lakeside Union Elementary School District, it is necessary that additional funding be provided for reading training programs in those school districts, 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.

SEC. 3. For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this act shall be deemed to be ''General Fund revenues appropriated to school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code for the 2000–01 fiscal year and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated

pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2000–01 fiscal year.

CHAPTER 745

An act to amend Section 16300 of, and to add Section 16003 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) Over the past decade, most of the growth in California's foster care system has been in relative placements.

(b) The number of placements of dependent children with relatives has grown from approximately 20 percent of total foster care placements in the early 1980's to nearly 50 percent of total foster care placements in 1997.

(c) Relative caregivers often receive very little notice or information prior to the placement of a child in their home after the removal of the child from the biological parent or guardian as a result of abuse or neglect.

(d) Relative caregivers enter into the child welfare service system with limited knowledge or understanding of its operations.

(e) Relative caregivers frequently report frustration with complex requirements and bureaucratic barriers they encounter when trying to negotiate services for the children in their care.

(f) Most relative caregivers are unaware of their rights and responsibilities as the primary caregiver of a child who is a dependent of the court.

(g) Currently, there are few accessible programs for relatives to assist them in navigating the child welfare system.

SEC. 2. It is the intent of the Legislature to do all of the following:

(a) Increase relative caregivers' understanding of the system and the resources available to them when they take on the care and custody of a child in foster care.

(b) Provide relative caregivers with critical training and information regarding the child welfare system that would enable them to make informed decisions and provide optimum care for abused and neglected children.

(c) Develop training and orientation programs that will be available and highly accessible to relative caregivers in the communities in which they reside.

SEC. 3. Section 16000 of the Welfare and Institutions Code is amended to read:

16000. It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. In any case in which a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with the relative as required by Section 7950 of the Family Code. When the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most familylike setting and to live as close to the child's family as possible pursuant to subdivision (c) of Section 16501.1. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.

SEC. 4. Section 16003 is added to the Welfare and Institutions Code, to read:

16003. (a) In order to promote the successful implementation of the statutory preference for foster care placement with a relative caretaker as set forth in Section 7950 of the Family Code, each community college district with a foster care education program shall make available orientation and training to the relative into whose care the county has placed a foster child pursuant to Section 1529.2 of the Health and Safety Code, including, but not limited to, courses that cover the following:

(1) The role, rights, and responsibilities of a relative caregiver caring for a relative child in foster care.

(2) An overview of the child protective system.

(3) The effects of child abuse and neglect on child development.

(4) Positive discipline and the importance of self-esteem.

(5) Health issues in foster care.

(6) Accessing education and health services that are available to foster children.

(7) Relationship and safety issues regarding contact with one or both of the birth parents.

(8) Permanency options for relative caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(9) Information on resources available for those who meet eligibility criteria, including out-of-home care payments, the Medi-Cal program, in-home supportive services, and other similar resources.

(b) In addition to training made available pursuant to subdivision (a), each community college district with a foster care education program shall make training available to a relative caregiver that includes, but need not be limited to, courses that cover all of the following:

(1) Age-appropriate child development.

(2) Health issues in foster care.

(3) Positive discipline and the importance of self-esteem.

(4) Emancipation and independent living.

(5) Accessing education and health services available to foster children.

(6) Relationship and safety issues regarding contact with one or both of the birth parents.

(7) Permanency options for relative caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(c) In addition to the requirements of subdivisions (a) and (b), each community college district with a foster care education program, in providing the orientation program, shall develop appropriate program parameters in collaboration with the counties.

(d) Each community college district with a foster care education program shall make every attempt to make the training and orientation programs for relative caregivers highly accessible in the communities in which they reside.

(e) When a child is placed with a relative caregiver, the county shall inform the relative caregiver of the availability of training and orientation programs and it is the intent of the Legislature that the county shall make every reasonable effort to forward the names and addresses of relative caregiver families who choose to receive the training and orientation information to the appropriate community colleges providing the training and orientation programs.

(f) This section shall not be construed to preclude counties from developing or expanding existing training and orientation programs for foster care providers to include relative caregivers.

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 746

An act relating to community college funding, and making an appropriation therefor.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

On this date I have signed Assembly Bill 2337 with a deletion.

This bill would appropriate $5,407,000 Proposition 98 General Fund to the Board of Governors of the California Community Colleges for Apprenticeship programs and to augment the Part-Time Faculty Office Hours Program.

However, I am deleting the augmentation of $2.1 million for the Part-Time Faculty Office Hours Program. As indicated in the Budget Act, I am not supportive of the reduced local match requirement contained in Chapter 71, Statutes of 2000. I am willing to consider additional funding for this program only if the matching requirement is restored to a 1:1 ratio.

GRAY DAVIS, Governor

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

SECTION 1. The sum of five million four hundred six thousand eight hundred thirty-six dollars ($5,406,836) is hereby appropriated from the General Fund, for support of the Board of Governors of the California Community Colleges, for purposes of augmenting Item 6870-101-0001 of Section 2.00 of the Budget Act of 2000 for expenditure according to the following schedule:

(a) The sum of two million one hundred thousand dollars ($2,100,000) to provide part-time faculty office hours.

(b) The sum of three million three hundred six thousand eight hundred thirty-six dollars ($3,306,836) to provide apprenticeships.

CHAPTER 747

An act to amend Section 17292 of, and to add Section 17292.1 to, the Education Code, relating to relocatable school buildings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 17292 of the Education Code is amended to read:

17292. (a) Notwithstanding any provision of law, an owned or leased relocatable building that does not meet the requirements of Section 17280 may be used until September 30, 2007, as a school building, if all of the following conditions are met:

(1) The relocatable building was manufactured and was in use for classroom purposes on or before May 1, 2000, and bears a commercial coach insignia of approval from the Department of Housing and Community Development.

(2) The relocatable building is a single story structure with not more than 2,160 square feet of interior floor area when all sections are joined together.

(3) The relocatable building was constructed after December 19, 1979, and bears a commercial coach insignia of approval from the Department of Housing and Community Development.

(4) The bracing and anchoring of interior overhead nonstructural elements, such as light fixtures and heating and air-conditioning diffusers, and the foundation system complies with the applicable rules and regulations adopted pursuant to this article and published in Title 24 of the California Code of Regulations.

(5) The building construction, including associated site construction, except for the relocatable building defined in paragraph (2), complies with the applicable rules and regulations adopted pursuant to this article, Sections 4450 to 4458, inclusive, of the Government Code, and Section 13143 of the Health and Safety Code and the administrative and building standards published in Title 19 and Title 24 of the California Code of Regulations.

(6) The Department of General Services has issued a certification of compliance with the requirements of this article.

(b) The Department of General Services may assess fees to carry out the requirements of this section. Fees imposed pursuant to this subdivision shall be equal to the costs associated with making the certifications and inspections required by, and otherwise enforcing, this section and shall be deposited in the Public School Planning, Design, and Construction Review Revolving Fund.

(c) Any relocatable building that has received a certification of compliance from the Department of General Services pursuant to subdivision (a) shall be reinspected for structural integrity by the Division of the State Architect by December 31, 2002.

(d) For each relocatable building that was used as a school building pursuant to this section, the governing board of the school district shall

adopt a resolution by October 30, 2007, certifying to the State Allocation Board that commencing September 30, 2007, the relocatable building is no longer being used as a school building.

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:

Existing waivers of the requirements for the design, construction, reconstruction, alteration of, or addition to, school buildings that were granted by the State Allocation Board to authorize the use of relocatable classrooms meeting certain structural standards and other conditions expire on September 30, 2000. The loss of the ability to retain these buildings will force school districts to replace existing relocatable classrooms. The relocatable classrooms currently in use may continue to be used if retrofitted pursuant to provisions of this act. In order to provide school districts with adequate time to make the decisions necessary to either upgrade or replace these buildings, it is necessary that this act take effect immediately.

CHAPTER 748

An act to amend Sections 52205, 52206, 52209, and 52212 of, to repeal Sections 52204 and 52208 of, and to repeal and add Section 52211 of, the Education Code, relating to gifted and talented pupils.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 52204 of the Education Code is repealed.

SEC. 2. Section 52205 of the Education Code is amended to read:

52205. The Superintendent of Public Instruction shall:

(a) Apportion funds pursuant to this chapter to each district for which an application to offer programs pursuant to this chapter has been approved by the State Board of Education according to this chapter and regulations adopted by the board.

(b) Assist school district governing boards, upon their request, to design, implement, and evaluate programs funded under this chapter.

(c) Ensure that the expenditure of funds authorized for programs pursuant to this chapter is consistent with this chapter.

(d) Encourage the development of locally designed, innovative programs for gifted and talented pupils.

(e) Assist districts in the development and implementation of staff development programs related to gifted and talented pupils.

(f) Encourage the development of procedures that assure the ongoing participation of parents of gifted and talented pupils in the planning and evaluation of programs funded pursuant to this chapter.

SEC. 3. Section 52206 of the Education Code is amended to read:

52206. (a) The governing boards of school districts that elect to provide programs pursuant to this chapter may establish programs for gifted and talented pupils consisting of special day classes, part-time groupings, and cluster groupings, consistent with the regulations of the State Board of Education. These programs shall be planned and organized as an integrated, differentiated learning experience within the regular school day, and may be augmented or supplemented with other differentiated activities related to the core curriculum using such strategies as independent study, acceleration, postsecondary education, and enrichment.

(b) Each participating governing board shall determine the most appropriate curricular components for participating pupils within its district.

(c) For all programs for gifted and talented pupils, including programs for pupils with high creative capabilities and talents in the performing and visual arts, each participating governing board shall concentrate part of its curriculum on providing participating pupils with an academic component and, where appropriate, with instruction in basic skills.

SEC. 4. Section 52208 of the Education Code is repealed.

SEC. 5. Section 52209 of the Education Code is amended to read:

52209. The governing board of any school district that provides a program for gifted and talented pupils pursuant to this chapter may:

(a) Conduct programs, seminars, and classes for gifted and talented pupils within or without the boundaries of the school district and, for that purpose, employ instructors, supervisors, and other personnel and provide necessary equipment and supplies.

(b) Transport or arrange for transportation of pupils to or from educational institutions where regularly scheduled programs and classes are being conducted.

Attendance of pupils at these programs, seminars, and classes shall be included in computing the average daily attendance of the district for the purposes of apportionments from the State School Fund.

Funds provided in support of this chapter shall be used solely for the purposes of this chapter. Allowances provided in any fiscal year but not expended in that year may be expended in subsequent fiscal years.

SEC. 6. Section 52211 of the Education Code is repealed.

SEC. 7. Section 52211 is added to the Education Code, to read:

52211. The Superintendent of Public Instruction shall, beginning in the 2001–02 school year, apportion funds to school districts pursuant to the provisions of this section. The superintendent shall perform the following calculations:

(a) Divide the total funding available for gifted and talented education (GATE) by the statewide total units of average daily attendance in kindergarten and grades 1 to 12, inclusive, at the second principle apportionment of the prior year, for all school districts participating in the GATE program in the current year.

(b) Multiply the dollar amount computed in subdivision (a) by the average daily attendance at the second principle apportionment of the prior year for each participating school district.

(c) No school district with fewer than 1,500 pupils in average daily attendance shall receive less to support its GATE program than two thousand five hundred dollars ($2,500) or the amount it received in 1998–99, whichever is greater.

(d) No district shall receive less per average daily attendance than the amount it received per average daily attendance in the 1999–2000 school year.

(e) The dollar amount in subdivision (c) shall be increased annually by the percentage inflation adjustment provided to the revenue limits of unified school districts of over 1,500 pupils in average daily attendance.

SEC. 8. Section 52212 of the Education Code is amended to read:

52212. (a) (1) Each applicant school district shall submit an application for approval for a proposed program for gifted and talented pupils to the State Board of Education. The application shall be submitted in the form and manner prescribed by the Superintendent of Public Instruction. An application shall be approved for a period of one, two, or three years, or denied, based on the quality of the plan, in accordance with criteria adopted by the State Board of Education. Those criteria shall be reviewed by the board at least once every four years and shall address, but are not limited to, the elements of program design, identification, curriculum and instruction, social and emotional development, professional development, parent and community involvement, program assessment and budgeting. The application shall include budget information including separate data on identification and program costs, and any other data required by the Superintendent of Public Instruction to administer and evaluate the program effectively. Each time a school district submits an application for renewal of its GATE authorization, the school district shall submit a program assessment in accordance with criteria adopted by the state board.

(2) Each participating governing board shall maintain auditable records.

(3) Each applicant school district shall designate, in its application to the State Board of Education, a person with responsibility for the development, identification procedure, and implementation of the local program for gifted and talented pupils, fiscal management, and the collection of auditable records for the independent evaluation.

(4) Applications for district programs shall be developed by the State Department of Education and made available to districts no later than April 1 of each year. The application shall not be part of the consolidated application.

(b) Notwithstanding subdivision (a), the state may approve an application for a period of five years, if following a site validation of the application by the department, it determines that the districts's program for gifted and talented pupils is exemplary.

CHAPTER 749

An act to amend Section 52122.1 of the Education Code, relating to class size reduction.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 52122.1 of the Education Code is amended to read:

52122.1. (a) A school district applying to implement the Class Size Reduction Program in additional classes in the 2000–01 and 2001–02 school years may request that a portion of the maximum operating funds for which the school district would be eligible if it fully reduced class size in kindergarten and in grades 1 to 3, inclusive, pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, be used for facilities-related costs necessary for new classes established under this program beyond those established in the prior school year.

(b) For the 2000–01 school year, an application made pursuant to this section, the form of which shall be developed by the Superintendent of Public Instruction not later than April 1, 2001, shall be submitted by each school district that elects to apply for funding under this section not later than June 1, 2001, and shall include certification by the governing board of the school district that, in the school year for which the application is being submitted, the school district can show one of the following:

(1) In the 1996–97 fiscal year, the school district received funding for the Class Size Reduction Facilities Funding Program pursuant to Chapter 19 (commencing with Section 17200) of Part 10.

(2) The school district is qualified as of the date of the application for new construction funding under the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10) on a districtwide basis or for the relevant school attendance area, as defined in Section 17070.15, or the district is eligible to receive growth funding from another statewide school construction program.

(3) The school district has insufficient classroom space to house all the new classes that need to be established in order for the district to participate in the Class Size Reduction Program contained in this chapter, as demonstrated through the eligibility calculation specified in Section 17203, as that section read on January 1, 1999, that shall be certified by the governing board of the school district, adjusted to exclude new teaching stations established in the school year for which the application is being submitted for this program.

(c) School districts requesting funds for facilities pursuant to this section are eligible to receive forty thousand dollars ($40,000) for each new teaching station that is needed to be established for the purpose of expanding the Class Size Reduction Program in the 2000–01 school year beyond the number of new classes established in the prior school year pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122.

(1) The maximum amount of funds a school district may receive for both operation funds, pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) of Section 52122, and facility funds provided by this section, is limited to the number of pupils in kindergarten through grades 1 to 3, inclusive, multiplied by the Option One stipend specified in Section 52126.

(2) The maximum apportionment for facilities-related costs available to a school district under this section shall be calculated as follows:

(A) Multiply the district's certified enrollment in kindergarten and grades 1 to 3, inclusive, as of October of the previous school year by the per pupil stipend established by subdivision (a) of Section 52126 for the school year for the year in which the application is being submitted.

(B) Subtract from the amount determined in subparagraph (A) the product of the number of pupils the district certifies are in a class that satisfies the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122 during the school year for the year in which the application is being submitted times the per pupil stipend for the school year in subdivisions (a) and (c) of Section 52126 for which the application is being submitted.

(C) Subtract from the amount determined in subparagraph (B) the product of the number of pupils the district certifies are in a class that satisfies the provisions of subparagraph (B) of paragraph (2) of subdivision (b) of Section 52122 during the school year for the year in which the application is being submitted times the per pupil stipend in subdivisions (b) and (d) of Section 52126 for which the application is being submitted.

(D) In no case shall a district receive facilities funding of more than forty thousand dollars ($40,000) per new class that is needed to expand the Class Size Reduction Program during the school year for which the application is being submitted.

(3) If, by June 30, of the year in which a facilities grant has been requested, or by a later date specified in a statute, the State Department of Education determines that the school district was eligible to receive facilities grants in excess of the number of facilities grants actually received, the department may award additional grants to the school district, to the extent that the funds are available for this purpose. To determine if funds are available to a school district for this purpose, the department shall use the calculations in subparagraphs (A) to (D), inclusive, of paragraph (2), but adjusted for actual implementation of the Class Size Reduction Program and yearend enrollment.

(d) For the 2001–02 school year, an application made pursuant to this section, the form of which shall be developed by the Superintendent of Public Instruction not later than 30 days after the Budget Act of 2001 is chaptered, shall be submitted by each school district that elects to apply for funding under this section not later than 90 days after the Budget Act of 2001 is chaptered and shall include certification by the governing board of the school district that in the 2001–02 school year, the school district can show one of the following:

(1) In the 1996–97 fiscal year, the school district received funding for the Class Size Reduction Facilities Funding Program pursuant to Chapter 19 (commencing with Section 17200) of Part 10.

(2) The school district is qualified as of the date of the application for new construction funding under the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10) on a districtwide basis or for the relevant school attendance area, as defined in Section 17070.15, or the district is eligible to receive growth funding from another statewide school construction program.

(3) The school district has insufficient classroom space to house all the new classes that need to be established in order for the district to participate in the Class Size Reduction Program contained in this chapter, as demonstrated through the eligibility calculation specified in Section 17203 as that section read on January 1, 1999, that shall be certified by the governing board of the school district, adjusted to

exclude new teaching stations established in the school year for which the application is being submitted for this program.

(e) School districts requesting funds for facilities pursuant to this section for the 2001–02 school year are eligible to receive forty thousand dollars ($40,000) for each new teaching station that is needed to be established for the purpose of expanding the Class Size Reduction Program in the 2001–02 school year beyond the number of new classes established in the prior school year pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122.

(1) The maximum initial amount of funds a school district may receive for both operation funds, pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) of Section 52122, and facility funds provided by this section, is limited to the number of pupils in kindergarten through grades 1 to 3, inclusive, multiplied by the Option One stipend specified in Section 52126.

(2) The maximum initial apportionment for facilities-related costs available to a school district under this section shall be calculated as follows:

(A) Multiply the district's certified enrollment in kindergarten and grades 1 to 3, inclusive, as of October of the previous school year by the per pupil stipend established by subdivision (a) of Section 52126 for the school year for the year in which the application is being submitted.

(B) Subtract from the amount determined in subparagraph (A) the product of the number of pupils the district certifies will be in a class which satisfies the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122 during the school year for the year in which the application is being submitted times the per pupil stipend for the school year in subdivisions (a) and (c) of Section 52126 for which the application is being submitted.

(C) Subtract from the amount determined in subparagraph (B) the product of the number of pupils the district certifies will be in a class that satisfies the provisions of subparagraph (B) of paragraph (2) of subdivision (b) of Section 52122 during the school year for the year in which the application is being submitted times the per pupil stipend in subdivisions (b) and (d) of Section 52126 for which the application is being submitted.

(D) In no case shall a district receive facilities funding of more than forty thousand dollars ($40,000) per new class that is needed to expand the Class Size Reduction Program during the school year for which the application is being submitted.

(3) If, by June 30 of the year in which a facilities grant has been requested, or by a later date specified in a statute, the State Department of Education determines that the school district was eligible to receive facilities grants in excess of the number of facilities grants actually

received, the department may award additional grants to the school district, to the extent that the funds are available for this purpose. To determine if funds are available to a school district for this purpose, the department shall use the calculations in subparagraphs (A) to (D), inclusive, of paragraph (2), but adjusted for actual implementation of the Class Size Reduction Program and yearend enrollment.

(f) The funds allocated pursuant to this section shall be considered to be a loan to the school district receiving the funds. The following loan repayment provisions shall apply to all allocations made pursuant to this section:

(1) If the school district is eligible to receive grants pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122 for the 2000–01 or 2001–02 school year and has satisfied all requirements to receive these funds in the 2000–01 or 2001–02 school year, for all classes for which it received facilities funding pursuant to this section, as determined by the State Department of Education, the school district shall not be required to repay the loan.

(2) If a school district receives funding pursuant to this section, but has not satisfied the requirements of paragraph (1) for all classes for which it received facilities funds, the Superintendent of Public Instruction shall notify the Controller and school district in writing, and the Controller shall deduct an amount equal to the portion of the total loan amount received by the school district under this subdivision for the classes that the school district failed to reduce the size to 20 or fewer pupils pursuant to the provisions of subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(g) Funds allocated to school districts pursuant to this section shall be expended solely for the purpose of facilities-related costs associated with the implementation of the Class Size Reduction Program contained in this chapter.

(h) Funds shall not be allocated to school districts pursuant to this section for the purpose of assisting school districts in implementing Option Two, as set forth in paragraph (2) of subdivision (b) of Section 52122.

(i) Nothing in this section shall be construed as precluding school districts from fully implementing class size reduction in kindergarten and grades 1 to 3, inclusive.

(j) It is the intent of the Legislature that, for each new teaching station a school district establishes for the purpose of class size reduction for which the school district did not receive a facilities grant under this section or any previous appropriation for this purpose, the school district

shall be eligible for facilities funding from any state general obligation bond measure approved for that purpose.

(k) For purposes of this section, any reference to school districts shall be deemed to include any charter school.

CHAPTER 750

An act to amend Sections 35400 and 35401 of the Education Code, relating to the Los Angeles Unified School District.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 35400 of the Education Code is amended to read:

35400. (a) The Los Angeles Unified School District's Inspector General of the Office of the Inspector General is authorized to conduct investigations, subpoena witnesses, administer oaths or affirmations, take testimony, and compel the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence deemed material and relevant and that reasonably relate to the inquiry or investigation undertaken by the inspector general when he or she has a reasonable suspicion that a law, regulation, rule, or district policy has been violated or is being violated. For purposes of this section, ''reasonable suspicion'' means that the circumstances known or apparent to the inspector general include specific and articulable facts causing him or her to suspect that a material violation of law, regulation, rule, or district policy has occurred or is occurring, and that the facts would cause a reasonable officer in a like position to suspect that a material violation of a law, regulation, rule, or district bulletin has occurred or is occurring.

(b) Subpoenas shall be served in the manner provided by law for service of summons. Any subpoena issued pursuant to this section may be subject to challenge pursuant to Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

(c) For purposes of this section, Sections 11184, 11185, 11186, 11187, 11188, 11189, 11190, and 11191 of the Government Code shall apply to the subpoenaing of witnesses and documents, reports, answers, records, accounts, papers, and other data and documentary evidence as if the investigation was being conducted by a state department head, except that the applicable court for resolving motions to compel or

motions to quash shall be the Superior Court for the County of Los Angeles.

(d) Notwithstanding any other provision of the law, any person who, after the administration of an oath or affirmation pursuant to this section, states or affirms as true any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment for the first offense. Any subsequent violation shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(e) The inspector general shall submit an interim report to the Legislature by July 1, 2000, annual interim reports by July 1 of each succeeding year through 2004, and a final cumulative report by December 1, 2004, on all of the following:

(1) The use and effectiveness of the subpoena power authorized by this section in the successful completion of the inspector general's duties.

(2) Any use of the subpoena power in which the issued subpoena was quashed, including the basis for the court's order.

(3) Any referral to the local district attorney or the Attorney General where the district attorney or Attorney General declined to investigate the matter further or declined to prosecute.

(f) 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. 2. Section 35401 of the Education Code is amended to read:

35401. (a) If the inspector general determines that there is reasonable cause to believe that an employee or outside agency has engaged in any illegal activity, he or she shall report the nature and details of the activity on a timely basis to the local district attorney or the Attorney General.

(b) The inspector general shall not have any enforcement power.

(c) Every investigation shall be kept confidential, except that the inspector general may issue any report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals involved, or release any findings resulting from an investigation conducted pursuant to this article that is deemed necessary to serve the interests of the district.

(d) This section shall not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

(e) Except as authorized in this section, or when called upon to testify in any court or proceeding at law, any disclosure of information by the

inspector general or that office that was acquired pursuant to a subpoena of the private books, documents, or papers of the person subpoenaed, is punishable as a misdemeanor.

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 751

An act to add Section 42263.5 to the Education Code, relating to school facilities.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 42263.5 is added to the Education Code, to read:

42263.5. (a) For purposes of the calculation of the capacity of the school as required in subdivision (b) of Section 42263, the superintendent shall comply with Section 17071.25 and this section.

(b) For purposes of this section, ''teaching stations'' shall not include one classroom for each schoolsite with 800 pupils or less, and two classrooms for each schoolsite with over 800 pupils, if all of the following conditions are met:

(1) The school is operating on a multitrack year-round educational program.

(2) A number of pupils, equal to or greater than 30 percent of the school district's total enrollment in kindergarten and grades 1 to 6, inclusive, are on the multitrack year-round program.

(3) The classroom or classrooms are used during the intersession for the academic remediation of pupils who are in the multitrack year-round program.

CHAPTER 752

An act to add and repeal Chapter 4.1 (commencing with Section 89415) of, Chapter 4.2 (commencing with Section 89416) of, and Chapter 4.3 (commencing with Section 89417) of, Part 55 of the Education Code, relating to the California State University.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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 Central American population of southern California is projected to be 2,500,000 by the year 2010, making the Central Americans the second largest Latino group in California.

(2) California State University, Northridge (CSUN), enrolls one of the largest concentrations of Central Americans of any university in the United States, and CSUN has already established an academic minor in Central American studies.

(3) The nations of Central America have rich and unique histories and cultures that are now increasingly interwoven with the history and culture of California.

(4) There is a need for research, education, and university services focused on the Central American community in California, the history and nature of the migration of members of that community, and the relationship between the economies and cultures of Central America and California.

(b) It is, therefore, the intent of the Legislature to accomplish both of the following:

(1) To request the Trustees of the California State University to establish the first research institute for Central American studies in the United States.

(2) To authorize the establishment of the Institute for Central American Studies at California State University, Northridge.

SEC. 2. Chapter 4.1 (commencing with Section 89415) is added to Part 55 of the Education Code, to read:

CHAPTER 4.1. CENTER FOR PORTUGUESE STUDIES

89415. (a) The trustees may establish a Center for Portuguese Studies at California State University, Stanislaus, with nonpublic funds or with other funds that the California State University, Stanislaus, is authorized to expend for, and makes available for, this purpose.

(b) From any moneys it may subsequently receive in grants and donations, the center shall reimburse the California State University for the full amount of any funds of the university, or the value of any resources supported by the funds of the university, that are expended to establish the center.

(c) An advisory board to the center may be established only if private funds have been donated to the center in an amount deemed by the trustees to be sufficient to defray the costs of that board.

89415.3. The university may expend an amount not to exceed two hundred fifty thousand dollars ($250,000) for the center.

89415.5. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Chapter 4.2 (commencing with Section 89416) is added to Part 55 of the Education Code, to read:

CHAPTER 4.2. AFRICAN AMERICAN POLITICAL INSTITUTE

89416. (a) The trustees may establish an African American Political Institute at California State University, Northridge, with nonpublic funds or with other funds that the California State University, Northridge, is authorized to expend for, and makes available for, this purpose.

(b) From any moneys it may subsequently receive in grants and donations, the institute shall reimburse the California State University for the full amount of any funds of the university, or the value of any resources supported by the funds of the university, that are expended to establish the institute.

(c) An advisory board to the institute may be established only if private funds have been donated to the institute in an amount deemed by the trustees to be sufficient to defray the costs of that board.

89416.3. The university may expend an amount not to exceed two hundred fifty thousand dollars ($250,000) for the institute.

89416.5. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 4. Chapter 4.3 (commencing with Section 89417) is added to Part 55 of the Education Code, to read:

CHAPTER 4.3. INSTITUTE FOR CENTRAL AMERICAN STUDIES

89417. (a) The trustees are authorized to establish an Institute for Central American Studies at California State University, Northridge, with nonpublic funds or with other funds that the California State

University, Northridge, is authorized to expend for, and makes available for, this purpose. The primary focus of this research institute will be to support the academic advancement of Central American studies as a discipline and to provide research and education concerning the totality of economic, historical, and cultural relationships among the nations of Central America, California, and Central American immigrants to California.

(b) From any moneys it may subsequently receive in grants and donations, the institute shall reimburse the California State University for the full amount of any funds of the university, or the value of any resources supported by the funds of the university, that are expended to establish the institute.

(c) An advisory board to the institute may be established only if private funds have been donated to the institute in an amount deemed by the trustees to be sufficient to defray the costs of that board.

89417.3. The university may expend an amount not to exceed two hundred fifty thousand dollars ($250,000) for the institute.

89417.5. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 753

An act to amend Section 17009.5 of, and to add Section 17052 to, the Education Code, relating to school facilities.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 17009.5 of the Education Code is amended to read:

17009.5. (a) Except as set forth in Section 17052, 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. 2. Section 17052 is added to the Education Code, to read:

17052. (a) Notwithstanding any other provision of law, the State Allocation Board may fund joint-use projects to construct libraries, multipurpose rooms, and gymnasiums, on school campuses where these facilities are used jointly for both school and community purposes.

(b) A school district may apply to the State Allocation Board for funding under this section if it meets all of the following requirements:

(1) The school does not have the type of facility for which it seeks funding.

(2) The school district agrees to provide local matching funds for 50 percent of the eligible cost of the facility as set forth in subdivision (c), and 100 percent local or joint-use funding for all costs that exceed that standard, as required by subdivision (d).

(3) The school district has obtained approval of the plans for the facility from the Division of the State Architect and the State Department of Education.

(4) The school district has entered into a joint-use agreement with its joint-use partner that specifies the method for sharing capital and operating costs, specifies relative responsibilities for the operation and staffing of the facility, and specifies the manner in which the safety of school pupils will be maintained during school hours.

(5) The school district demonstrates that the facility will be used to the maximum extent possible for school and community purposes after regular school hours.

(c) The State Allocation Board shall establish standards for the amount of funding to be made available for each project under this section. The funding standards may be expressed as per-square-foot cost limits or per-pupil cost limits or both.

(d) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards set forth in subdivision (c) if the excess is paid completely by local or joint-use partnership sources.

(e) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purposes of this section.

(f) The board may establish priority standards to govern the order of funding projects. If applications exceed available funding, the board shall give priority to applications where the size of the project is increased by at least 30 percent beyond minimum essential facilities through the use of additional funding from a joint-use partner.

CHAPTER 754

An act to amend Sections 122405 and 122410 of, and to add Sections 122406, 122415, and 122420 to, the Health and Safety Code, relating to hepatitis, and making an appropriation therefor.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

On this date I have signed Senate Bill 1256 with a reduction.

This bill requires (1) the State Department of Health Services to develop and implement a public education and outreach program to raise awareness of Hepatitis C, (2) an annual report to the Legislature by the California Department of Corrections on the prevalence of Hepatitis C in correctional facilities, and (3) a report to the Legislature by the Department of Veterans Affairs regarding the use of funds earmarked by the federal Veterans Administration to regional offices in CA to education, screen and treat veterans with the Hepatitis C virus.

This bill addresses a growing public health concern, with as many as 500,000 Californians affected by the virus. This problem is particularly acute among veterans, with 20% of veterans tested nationally since 1998 testing positive for Hepatitis C. For this reason, I am directing the Department of Health Services to allocate at least 50% of the funds made available by this bill to outreach, education and testing efforts targeted at veterans. I am also reducing the appropriation contained in the bill by $500,000. The revised appropriation shall be $1,500,000.

GRAY DAVIS, Governor

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

SECTION 1. Section 122405 of the Health and Safety Code is amended to read:

122405. The Legislature hereby finds and declares all of the following:

(a) Hepatitis C is classified as a silent killer, where no recognizable signs or symptoms occur until severe liver damage has occurred.

(b) Hepatitis C has been characterized by the World Health Organization as a disease of primary concern to humanity.

(c) Studies indicate that 1.8 percent of the population, nearly 4 million Americans, carry the virus HCV that causes hepatitis C. In California, as many as 500,000 individuals may be carriers and could develop the debilitating and potentially deadly liver disease associated with hepatitis C in their lifetime. An expert panel, convened in March by the National Institutes of Health (NIH), estimated that 30,000 acute new infections occur each year in the United States, and only 25 to 30 percent of those are diagnosed. Current data sources indicate that 8,000 to 10,000 Americans die from hepatitis C each year.

(d) Studies also indicate that 39.4 percent of male inmates and 54.5 percent of female inmates in California correctional facilities have hepatitis C, 26 times higher than the general population. Upon their release from prison, these inmates present a significant health risk to the general population of California.

(e) It is the intent of the Legislature to study the adequacy of the health care delivery system as it pertains to hepatitis C.

(f) It is the intent of the Legislature to urge the department to make funds available to community-based nonprofit organizations for education and outreach with respect to the hepatitis C virus.

SEC. 2. Section 122406 is added to the Health and Safety Code, to read:

122406. The Secretary of Veterans Affairs shall report to the Legislature on or before March 1, 2001, regarding the use of funds earmarked by the federal Veteran's Administration to regional offices in California to educate, screen, and treat veterans with the hepatitis C virus.

SEC. 3. Section 122410 of the Health and Safety Code is amended to read:

122410. (a) The State Department of Health Services shall make available protocols and guidelines developed by the National Institutes of Health, the University of California at San Francisco, and California legislative advisory committees on hepatitis C for educating physicians and health professionals and training community service providers on the most recent scientific and medical information on hepatitis C detection, transmission, diagnosis, treatment, and therapeutic decisionmaking.

(b) The guidelines referenced in subdivision (a) may include, but not be limited to, all of the following:

(1) Tracking and reporting of both acute and chronic cases of hepatitis C by public health officials.

(2) A cost-efficient plan to screen the prison population and the medically indigent population in California.

(3) Protocols within the Department of Corrections to enable that department to provide appropriate prevention and treatment to prisoners with hepatitis C.

(4) Protocols for the education of correctional peace officers and other correctional workers who work with prisoners with hepatitis C.

(5) Protocols for public safety and health care workers who come in contact with hepatitis C patients.

(6) Surveillance programs to determine the prevalence of hepatitis C in ethnic and other high-risk populations.

(7) Education and outreach programs for high-risk individuals, including, but not limited to, individuals who received blood transfusions prior to 1992, hemophiliacs, veterans, women who underwent a caesarian section or premature delivery prior to 1990, persons who received an organ transplant prior to 1990, persons who receive invasive cosmetic procedures, including body piercing and tattooing, students, minority communities, and any other categories of persons at high risk for hepatitis C infection as determined by the director. Education and outreach programs shall be targeted to high-risk individuals as determined by the director. Education programs may provide information and referral on hepatitis C including, but not limited to, education materials developed by health-related companies, community-based or national advocacy organizations, counseling, patient support groups, and existing hotlines for consumers.

(c) Nothing in this section shall be construed to require the department to develop or produce any protocol, guideline, or proposal.

SEC. 4. Section 122415 is added to the Health and Safety Code, to read:

122415. (a) The Director of Corrections shall do all of the following:

(1) Provide the budget subcommittees of the Legislature, on or before March 1, 2002, with an annual statistical report on the prevalence of the hepatitis C virus in correctional facilities and trends in the incidence and prevalence of the hepatitis C virus in the correctional system.

(2) Establish and make available a voluntary program to test inmates for the presence of the hepatitis C virus upon incarceration and in conjunction with any routine blood testing.

(3) Update treatment protocols and regimens as new therapies become available.

(b) This section shall be implemented only to the extent funds for this purpose have been appropriated in the annual Budget Act.

SEC. 5. Section 122420 is added to the Health and Safety Code, to read:

122420. The Director of Health Services shall do all of the following:

(a) Develop and implement a public education and outreach program to raise awareness of the hepatitis C virus aimed at high-risk groups, physician's offices, health care workers, and health care facilities. The program shall do all of the following:

(1) Attempt to coordinate with national public education efforts related to the identification and notification of recipients of blood from hepatitis C virus-positive donors.

(2) Attempt to stimulate interest and coordinate with community-based organizations to sponsor community forums and undertake other appropriate community outreach activities.

(3) Employ public communication strategies utilizing a variety of media that may include, but is not limited to, print, radio, television, and the Internet.

(b) Include information on co-infection of human immunodeficiency virus (HIV) or hemophilia with the hepatitis C virus in the professional training and all appropriate care and treatment programs under the jurisdiction of the department.

(c) Develop a program to work with the Department of Corrections to identify hepatitis C virus-positive inmates likely to be released within two years and provide counseling and treatment options to reduce the community risk.

(d) Urge local public health officials to make hepatitis C virus screening available for uninsured individuals upon request.

(e) Include hepatitis C counseling, education, and testing, as appropriate, into local state-funded programs including those addressing HIV, tuberculosis, sexually transmitted disease, and all other appropriate programs approved by the director.

SEC. 6. The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the State Department of Health Services for purposes of implementing Section 122420 of the Health and Safety Code.

CHAPTER 755

An act to amend Section 5514 of, and to add Section 5506.11 to, the Public Resources Code, relating to regional open-space districts.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) There is increasing pressure to develop the pristine natural areas of Santa Barbara County.

(b) Formation of a regional open-space district in Santa Barbara County is critically needed to help address the unresolved needs and development pressures in the Santa Barbara area with respect to the preservation of open-space and nature areas.

SEC. 2. Section 5506.11 is added to the Public Resources Code, to read:

5506.11. (a) A proceeding for the formation of a regional district in Santa Barbara County may be initiated by resolution of the Board of Supervisors of the County of Santa Barbara, adopted after a hearing noticed in accordance with Section 6064 of the Government Code, in lieu of the petition and proceedings related to the petition as specified in this article.

(b) The resolution shall do all of the following:

(1) Name the proposed regional district and state the reasons for forming it.

(2) Specify that the proposed regional district shall be governed by a board of five directors, to be elected in accordance with this article.

(3) Specify the territory to be included in the proposed regional district. The territory of the proposed regional district may include part

of the territory within Santa Barbara County, and may include incorporated cities within that territory.

(4) Specify the boundaries of the five wards or subdistricts drawn pursuant to Section 5515.

(5) Specify that the regional district shall not have, and may not exercise, the power of eminent domain pursuant to Section 5542 or any other provision of law.

(6) Describe the methods by which the proposed regional district will be financed.

(7) Call, and give notice of, an election to be held in the proposed regional district pursuant to subdivision (b) of Section 5514.

(8) Prescribe any other matters necessary to the formation of the proposed regional district.

(c) For purposes of this section, ''regional district'' means an open-space district formed pursuant to this section that contains part of the territory within Santa Barbara County, including all incorporated cities within that territory.

SEC. 3. Section 5514 of the Public Resources Code is amended to read:

5514. (a) The board of supervisors of the county having the largest area within the proposed district shall, if the petition, after the hearing, has been approved, in whole or in part, have jurisdiction to proceed further with the calling of an election within the boundaries of the proposed district as described in the resolution passed at the conclusion of the hearing, and shall, either as a part of the same resolution or by a later resolution, call an election within the proposed district for the purpose of determining whether the district shall be created and established and for the purpose of electing the first board of directors therefor in case the district is created.

(b) In a district proposed to be formed pursuant to Section 5506.5 or 5506.11, the resolution calling the election may provide for a single ballot measure or separate ballot measures on the question of formation, establishment of an appropriations limit authorized by Section 4 of Article XIII B of the California Constitution, the authority to tax pursuant to Section 5566, and the authority to sell bonds pursuant to Section 5568, or any combination of those questions.

CHAPTER 756

An act to amend Section 33334.2 of, and to amend and repeal Section 33413 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 26, 2000. Filed with
Secretary of State September 27, 2000.]

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

SECTION 1. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan

required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured

the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions which are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies which make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies which make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional

housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if either (A) the improvements are made as part of a program which results in the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements or (B) the agency finds that the improvements are necessary to eliminate a specific condition that jeopardizes the health or safety of existing low- or moderate-income residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 2. Section 33413 of the Health and Safety Code, as amended by Section 1 of Chapter 329 of the Statutes of 1996, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) At least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(ii) To satisfy the provisions of this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing costs, to persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) As used in this paragraph and in paragraph (1), ''substantially rehabilitated dwelling units'' means substantially rehabilitated multifamily rented dwelling units with three or more units or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), ''substantial rehabilitation'' means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy the provisions of this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable housing cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost for not less than 30 years. Not more than 50 percent of the units made available pursuant to

paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except for the following:

(1) A longer period of time may be required by other provisions of law.

(2) (A) The agency may permit sales of owner-occupied units prior to the expiration of the period of the land use controls established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the

seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this subparagraph, expend funds to make affordable an equal number of units at the same income level as units sold under this subparagraph.

(B) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision. The requirements of this subdivision shall be made enforceable in the same manner as provided in subdivision (f) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

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

SEC. 3. Section 33413 of the Health and Safety Code, as amended by Section 2 of Chapter 329 of the Statutes of 1996, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing

market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) Any dwelling units constructed, rehabilitated, or acquired prior to January 1, 1997, pursuant to provisions that were in effect at the time of the construction, rehabilitation, or acquisition may continue to be counted to meet the requirements of this section.

(i) This section shall become operative on January 1, 2002.

CHAPTER 757

An act to amend Sections 7735 and 7736 of the Business and Professions Code, relating to funeral arrangements.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 7735 of the Business and Professions Code is amended to read:

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as ''contract,'' requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use

or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee to be determined by the bureau, and to establish a reserve of not to exceed 10 percent of the corpus of the trust as a revocation fee in the event of cancellation on the part of the beneficiary. The annual fee for trust administration may be recovered by withdrawals from accumulated trust income, provided that total withdrawals for this purpose shall not exceed the amount determined by the bureau. In no case shall the total amount withdrawn in a year for trust administration exceed the total amount of posted trust income for the immediate 12 preceding months. In addition to annual fees and reserves authorized by this section, a trustee may, at its election, pay taxes on the earnings on any trust pursuant to Section 17760.5 of the Revenue and Taxation Code. In no event, however, shall taxes paid on the earnings of any trust be considered part of the fees or reserves authorized by this section. All remaining income shall be accumulated in trust.

None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust.

SEC. 2. Section 7736 of the Business and Professions Code is amended to read:

7736. For the purposes of this article the term ''trustee'' shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word ''trustor'' shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term ''beneficiary'' shall be the person for whom the funeral services are arranged; the words ''corpus of the trust'' shall include all moneys paid and securities delivered by the trustor pursuant to the provisions of the article.

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 758

An act to add Section 6106.5 to the Public Contract Code, relating to public contracts.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 6106.5 is added to the Public Contract Code, to read:

6106.5. (a) ''State agency,'' as used in this section, means those departments defined in Section 10106 of the Public Contract Code.

(b) ''Contractor,'' as used in this section, means ''Firm,'' ''Architectural, landscape architectural, engineering, environmental, and land surveying services,'' ''Construction project management,'' and ''Environmental services'' as defined in Section 4525 of the Government Code.

(c) State agencies shall include a provision in solicitations and in contracts, where the estimated amount to be retained exceeds ten thousand dollars ($10,000), and the retention continues for a period of 60 days beyond the completion of phased services, to permit, upon written request and the expense of the contractor, the payment of retentions earned directly to a state or federally chartered bank in this state, as the escrow agent. The contractor may direct the investment of the payments into securities, pursuant to paragraph (d), and the contractor shall receive the interest earned on the investments. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section. State agencies, relative to contracts entered into prior to enactment of this section, upon written request of the contractor, and subject to the approval of the state agency, may utilize the provisions of this section.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, interest-bearing demand deposit accounts, or any other investment mutually agreed to by the contractor and the state agency.

(e) (1) Any contractor who elects to receive interest on moneys withheld in retention by a state agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a state agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than 5 percent of the contractor's total fee.

(3) No contactor shall require any subcontractor to waive any provision of this section.

(f) An escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS

This Escrow Agreement is made and entered into by and between _____

whose address is _____

hereinafter called ''owner,'' _____

whose address is _____

hereinafter called ''contractor,'' and _____

whose address is _____

hereinafter called ''escrow agent.''

(1) Pursuant to Section 6106.5 of the Public Contract Code of the State of California, upon written request of the contractor, the owner shall make payments of retention earnings required to be withheld by the owner pursuant to the professional consulting services agreement entered into between the owner and contractor for ____ in the amount of ____ dated ____ hereafter referred to as the ''contract.''

(2) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the

contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities pursuant to Section 6106.5(d) of the Public Contract Code. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(3) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(4) The contractor shall have the right to withdraw all or any part of the principal or interest in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(5) The owner shall have a right to draw upon the escrow account in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately distribute the cash as instructed by the owner.

(6) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the contractor all deposits and interest on deposits less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys on deposit and payments of fees and charges.

(7) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (6), inclusive, of this agreement and the owner and contractor shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(8) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:	On behalf of the contractor:
Title	Title
Name	Name
Address	Address

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
Title	Title
Name	Name
Signature	Signature

CHAPTER 759

An act to amend Sections 10335, 10336, 10339, 10340, 10344, 10344.1, 10345, 10346, 10348, 10349, 10351, 10353, 10359, 10367, 10369, 10370, 10371, and 10381 of, to amend and renumber Section 10357 of, to add Sections 10335.5, and 10348.5 to, to amend the heading of Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of, to repeal Sections 10343, 10344.3, 10355, 10356, 10358, 10360, 10362, 10363, 10364, 10365, 10366, 10372, 10373, 10374, 10375, 10376, 10377, 10378, 10379, 10380, and 10382 of, and to repeal

the heading of Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The heading of Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is amended to read:

Article 4. Contracts for Services

SEC. 2. Section 10335 of the Public Contract Code is amended to read:

10335. (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Section 10351, all contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval. This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are listed as exceptions in Section 10295, contracts of less than five thousand dollars ($5,000) in amount, contracts of less than five thousand dollars ($5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the

Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars ($20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

(3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

SEC. 3. Section 10335.5 is added to the Public Contract Code, to read:

10335.5. (a) ''Consulting services contract,'' as used in this article, means services that do all of the following:

(1) Are of an advisory nature.

(2) Provide a recommended course of action or personal expertise.

(3) Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and program management or innovation.

(4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) ''Consulting services contract'' does not include any of the following:

(1) Contracts between a state agency and the federal government.

(2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consulting services contracts are exempt from the advertising and bidding requirements of this article:

(1) Contracts that are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.

(2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.

(3) Contracts solely for the purpose of obtaining expert witnesses for litigation.

(4) Contracts for legal defense, legal advice, or legal services.

(5) Contracts in an amount of less than five thousand dollars ($5,000).

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

SEC. 4. Section 10336 of the Public Contract Code is amended to read:

10336. The Department of Finance may establish those controls over approval of contracts by the department as are necessary to assure that approval is consistent with program and budgetary determinations of the Department of Finance. The controls established under this section shall not be constructed in a fashion or be construed in a manner which would authorize the Department of Finance to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article. The Department of Finance, when it has reason to believe that a proposed contract is not in compliance with its program and budgetary determinations, may direct a state agency to transmit the contract to it for review. It is the intent of the Legislature, however, that any review of this type shall be restricted to individual contracts and shall occur only if no alternative course of action satisfactory to the Department of Finance is available.

SEC. 5. Section 10339 of the Public Contract Code is amended to read:

10339. (a) Subject to the provisions of Section 10348, no state agency shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a contract, in a manner that limits the bidding directly or indirectly to any one bidder.

(b) Any contract awarded in violation of subdivision (a) shall be void.

SEC. 6. Section 10340 of the Public Contract Code is amended to read:

10340. (a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.

(b) Three competitive bids or proposals are not required in any of the following cases:

(1) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.

(2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals.

(3) The contract is with another state agency, a local governmental entity, an auxiliary organization of the California State University, an auxiliary organization of a California community college, a foundation organized to support the Board of Governors of the California Community Colleges, or an auxiliary organization of the Student Aid Commission established pursuant to Section 69522 of the Education Code. These contracts, however, may not be used to circumvent the competitive bidding requirements of this article.

(4) The contract meets the conditions prescribed by the department pursuant to subdivision (a) of Section 10348.

(5) The contract has been awarded without advertising and calling for bids pursuant to Section 19404 of the Welfare and Institutions Code.

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations.

(c) Any agency which has received less than three bids or proposals on a contract shall document, in a manner prescribed by the department, the names and addresses of the firms or individuals it solicited for bids or proposals.

SEC. 7. Section 10343 of the Public Contract Code is repealed.

SEC. 8. Section 10344 of the Public Contract Code is amended to read:

10344. (a) Contracts subject to the provisions of this article may be awarded under a procedure which makes use of a request for proposal. State agencies that use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format that proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due and the timetable the agency will follow in reviewing and evaluating them.

State agencies which use a procedure that makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c). No proposals shall be considered that have not been received at the place, and prior to the closing time, stated in the request for proposal.

(b) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a description of the methods that will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be

available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.

(d) Nothing in this section shall require the awarding of the contract if no proposals are received containing bids offering a contract price that in the opinion of the state agency is a reasonable price.

SEC. 9. Section 10344.1 of the Public Contract Code is amended to read:

10344.1. The Department of Personnel Administration, with respect to contracts it enters into for state employees for employee benefits, occupational health and safety, training services, or any combination thereof, shall provide all qualified bidders with a fair opportunity to enter the bidding process, therefore stimulating competition in a manner conducive to sound fiscal practices. The Department of Personnel Administration shall make available to any member of the public its guidelines for awarding these contracts, and to the extent feasible, implement the objectives set forth in Section 10351.

SEC. 10. Section 10344.3 of the Public Contract Code is repealed.

SEC. 11. Section 10345 of the Public Contract Code is amended to read:

10345. (a) Whenever a contract is awarded under a procedure providing for competitive bidding, but the contract is not to be awarded to the low bidder, the low bidder shall be given notice five working days prior to the award of the contract by telegram, electronic facsimile transmission, overnight courier, Internet transmission, or personal delivery.

(1) Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a place accessible by the general public, including any Internet site identified in the invitation for bids at least five working days prior to awarding the contract.

(2) If, prior to the award, any bidder files a protest with the awarding state agency and the department protesting the award of the contract on the grounds that he or she is the lowest responsible bidder meeting the specifications for the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

(3) Within five days after filing the protest, the protesting bidder shall file with the department and the awarding state agency a full and complete written statement specifying the grounds for the protest.

(b) Contracts awarded under the provisions of Section 10344 shall be awarded only after a notice of the proposed award has been posted in a place accessible by the general public, including any Internet site identified in the request for proposal, for five working days.

(1) If, prior to the award, any bidder files a protest with the awarding state agency and the department against the awarding of the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

(2) Within five days after filing the protest, the protesting bidder shall file with the department and awarding state agency a full and complete written statement specifying the grounds for the protest. Protests shall be limited to the following grounds:

(A) The state agency failed to follow the procedures specified in either subdivision (b) or (c) of Section 10344.

(B) The state agency failed to apply correctly the standards for reviewing the format requirements or evaluating the proposals as specified in the request for proposal.

(C) The state agency used the evaluation and selection procedure in subdivision (b) of Section 10344, but is proposing to award the contract to a bidder other than the lowest responsible bidder.

(D) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but failed to follow the methods for evaluating and scoring the proposals specified in the request for proposal.

(E) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but is proposing to award the contract to a bidder other than the bidder given the highest score by the state agency evaluation committee.

(c) The department shall establish written procedures for deciding protests under this section.

SEC. 12. Section 10346 of the Public Contract Code is amended to read:

10346. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task.

No state agency shall make progress payments on a contract unless it first has established procedures, approved by the department, which will ensure that the work or services contracted are being delivered in accordance with the contract.

SEC. 13. Section 10348 of the Public Contract Code is amended to read:

10348. The department shall prescribe the following:

(a) The conditions under which a contract may be awarded without competition, and the methods and criteria which shall be used in

determining the reasonableness of contract costs when a contract is awarded without competition.

(b) Any special requirements for evaluating multiple-year contracts which the department deems necessary to protect the financial interest of the state.

(c) For contracts of less than twenty thousand dollars ($20,000), the conditions under which some or all of the provisions of this article may be waived in order to assist agencies in obtaining services and consultant services in an efficient and timely manner.

SEC. 14. Section 10348.5 is added to the Public Contract Code, to read:

10348.5. Each state agency shall designate at least one currently existing person or position within the state agency as a contract manager. Every contract manager shall have knowledge of legal contractual arrangements.

SEC. 15. Section 10349 of the Public Contract Code is amended to read:

10349. The Department of Personnel Administration shall establish a program for training state agency contracting personnel in contract administration and contract management. The cost of training state agency contracting personnel shall be paid by state agencies out of their appropriations for personnel training. The Department of Personnel Administration shall, prior to establishing the training program required by this section, consult with the department concerning the training curriculum and the development of a training manual on contract administration.

SEC. 16. Section 10351 of the Public Contract Code is amended to read:

10351. (a) The department shall exempt from its approval contracts under seventy-five thousand dollars ($75,000) that any state agency awards if the state agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the state agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

SEC. 17. Section 10353 of the Public Contract Code is amended to read:

10353. A contract in an amount in excess of two hundred thousand dollars ($200,000) that is governed by the provisions of this part shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a project as defined in Section 10105.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

(a) Interfere with or create a violation of the terms of valid collective bargaining agreements.

(b) Require the contractor to hire an unqualified recipient of aid.

(c) Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.

(d) Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code.

If waivers are deemed necessary to implement this section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and if the State Department of Social Services has not obtained these waivers from the federal government by March 1, 1985, the department shall report on the barriers to the waivers and the expected date of waiver approval.

This section is not applicable to consulting services contracts.

SEC. 18. The heading of Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is repealed.

SEC. 19. Section 10355 of the Public Contract Code is repealed.

SEC. 20. Section 10356 of the Public Contract Code is repealed.

SEC. 21. Section 10357 of the Public Contract Code is amended and renumbered to read:

10335.7. ''State agency,'' as used in this article, means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government.

SEC. 22. Section 10358 of the Public Contract Code is repealed.

SEC. 23. Section 10359 of the Public Contract Code is amended to read:

10359. (a) Each state agency shall annually prepare a report pursuant to this section that includes a list of the consulting services contracts into which it has entered during the previous fiscal year. The listing shall include the following information:

(1) The name and identification of each contractor.

(2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.

(3) The amount of the contract price.

(4) Whether the contract was a sole-source contract, and why the contract was a sole-source contract.

(5) The purpose of the contract and the potential beneficiaries.

(6) The date on which the initial contract was signed, the date on which the work began and was completed.

The report shall also include a separate listing of consultant contracts completed during that fiscal year, with the same information as above.

(b) The report this section requires shall also include a list of any contracts underway during that fiscal year on which any change was made regarding the following:

(1) The completion date of the contract.

(2) The amount of money to be received by the contractor, if it exceeds 3 percent of the original contract price.

(3) The purpose of the contract or duties of the contractor. A brief explanation shall be given if the change in purpose is significant.

(c) Copies of the annual report shall be sent within 30 working days after the end of the previous fiscal year to the Legislative Analyst, the Department of Finance, the Department of General Services, the Auditor General, the Joint Legislative Budget Committee, the Senate Appropriations Committee, and the Assembly Ways and Means Committee.

(d) State agencies shall not use the temporary budget allocation process as a means of circumventing the requirements of this section.

(e) Sixty days after the close of the fiscal year, the department shall furnish to the officials and committees listed in subdivision (c), a list of the departments and agencies that have not submitted the required report specified in this section.

SEC. 24. Section 10360 of the Public Contract Code is repealed.

SEC. 25. Section 10362 of the Public Contract Code is repealed.

SEC. 26. Section 10363 of the Public Contract Code is repealed.

SEC. 27. Section 10364 of the Public Contract Code is repealed.

SEC. 28. Section 10365 of the Public Contract Code is repealed.

SEC. 29. Section 10366 of the Public Contract Code is repealed.

SEC. 30. Section 10367 of the Public Contract Code is amended to read:

10367. (a) Each contractor shall be advised in writing on the standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.

(b) The department shall use standardized evaluation forms and make them available to every state agency. Each state agency shall use post-evaluation forms to evaluate all consulting services contracts totaling five thousand dollars ($5,000) or more.

The department shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to the state, and a form for assessing the usability and utility of the completed consulting services contract.

SEC. 31. Section 10369 of the Public Contract Code is amended to read:

10369. (a) Each state agency shall conduct a post-evaluation, by completing the post-evaluation form, of each consulting services contract totaling five thousand dollars ($5,000) or more that it executes.

(b) The agency shall evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded. The agency shall report on all of the following:

(1) Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.

(2) Whether the contracted work or services met the quality standards specified in the contract.

(3) Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.

(4) Factors outside the control of the contractor that caused difficulties in contractor performance.

(5) Other information the department may require.

(6) How the contract results and findings will be utilized to meet the agency goals.

(c) If the contractor's performance was judged unsatisfactory on any of the factors specified in subdivision (b) and was not mitigated by circumstances specified in paragraph (4) of subdivision (b), the evaluation shall be considered unsatisfactory for the purposes of subdivisions (e) and (f).

(d) The post-evaluation shall be prepared within 60 days of the completion of the contract.

(e) Post-evaluations shall remain on file at the offices of the awarding state agency for a period of 36 months following contract completion. If the contractor did not satisfactorily perform the work or service specified in the contract, the state agency conducting the evaluation shall place one copy of the evaluation form in the state agency's contract file and send one copy of the form to the department within five working days of the completion of the evaluation.

(f) Upon filing an unsatisfactory evaluation with the department, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have the right, within 30 days after receipt, to submit to the awarding state agency and the department, a written response statement that shall be filed with the evaluation in the state agency's contract file and in the department.

SEC. 32. Section 10370 of the Public Contract Code is amended to read:

10370. The evaluations and contractor responses on file with the state agencies and the department shall not be public records. The department shall act as a central depository for all state agencies making evaluation or desiring information on a contractor's record with the state and shall send a copy of any post-evaluation report and response to the contracting manager or contracting officer of any state agency upon request. The post-evaluations and contractor responses shall remain on file for a period of 36 months only.

Failure by the awarding state agency to send a negative post-evaluation to the department may be grounds for rejection of future contracts or modification of exemptions.

SEC. 33. Section 10371 of the Public Contract Code is amended to read:

10371. The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars ($12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars ($12,500) approved by the department.

(c) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars ($5,000) or more, prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For the purpose of this subdivision an ''emergency'' means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

(e) No consulting services contractor shall be awarded a contract totaling five thousand dollars ($5,000), or more, unless all of the following apply:

(1) The state agency has reviewed any contractor evaluation form on file with the department in accordance with Section 10369.

(2) Each state agency shall require that a completed resumé for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.

(3) The department shall notify a state agency seeking approval of a proposed contract within 10 working days if it has a negative evaluation in its files on a previous contract or contracts awarded to this contractor.

(f) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

(g) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

(h) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the state agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

SEC. 34. Section 10372 of the Public Contract Code is repealed.

SEC. 35. Section 10373 of the Public Contract Code is repealed.

SEC. 36. Section 10374 of the Public Contract Code is repealed.

SEC. 37. Section 10375 of the Public Contract Code is repealed.

SEC. 38. Section 10376 of the Public Contract Code is repealed.

SEC. 39. Section 10377 of the Public Contract Code is repealed.

SEC. 40. Section 10378 of the Public Contract Code is repealed.

SEC. 41. Section 10379 of the Public Contract Code is repealed.

SEC. 42. Section 10380 of the Public Contract Code is repealed.

SEC. 43. Section 10381 of the Public Contract Code is amended to read:

10381. (a) The department shall ensure that all state agencies are kept fully informed of the department's plans and procedures for implementing the provisions of this article. The department shall make information available on implementation procedures to all interested parties.

(b) The department shall ensure that every consultant services contract contains standard language that fully informs the contractor of his or her duties, obligations, and rights under this article, and any additional contractor rights and obligations which the department determines should be included.

(c) Each consulting services contract shall have a provision for settlement of contract disputes.

SEC. 44. Section 10382 of the Public Contract Code is repealed.

CHAPTER 760

An act to amend Section 3248 of the Civil Code, and to amend Section 7103 of the Public Contract Code, relating to payment bonds.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 3248 of the Civil Code is amended to read:

3248. In order to be approved, the payment bond shall satisfy all of the following requirements:

(a) The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.

(b) The bond shall provide that if the original contractor or a subcontractor fails to pay (1) any of the persons named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the sureties will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The original contractor may require of the subcontractors a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by the subcontractors under this section.

(c) The bond shall, by its terms, inure to the benefit of any of the persons named in Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

(d) The bond shall be in the form of a bond and not a deposit in lieu of a bond.

SEC. 2. Section 7103 of the Public Contract Code is amended to read:

7103. (a) Every original contractor to who is awarded a contract by a state entity, as defined in subdivision (d), involving an expenditure in excess of five thousand dollars ($5,000) for any public work shall, before entering up the performance of the work, file a payment bond with and approved by the officer or state entity by who the contract was awarded. The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.

The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract which supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering and land surveying services pursuant to a contract with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, ''state entity'' means every state office department, division, bureau, board, or commission, but does not

include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of Section 3247 of the Civil Code.

(e) For purposes of this section, ''public work'' includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind.

CHAPTER 761

An act to amend Section 35721 of, and to add Sections 35700.5 and 35721.5 to, the Education Code, to amend Sections 34880, 56000, 56001, 56029, 56036, 56038, 56046, 56048, 56064, 56067, 56068, 56069, 56074, 56100, 56101, 56106, 56107, 56122, 56123, 56124, 56129, 56132, 56133, 56150, 56154, 56156, 56157, 56159, 56300, 56301, 56325, 56326, 56326.5, 56327, 56328, 56329, 56332, 56334, 56375, 56375.5, 56377, 56383, 56384, 56386, 56425, 56429, 56653, 56705, 56706, 56708, 56710, 57000, 57001, 57002, 57003, 57007, 57008, 57025, 57026, 57050, 57051, 57052, 57075, 57075.5, 57076, 57077, 57078, 57080, 57081, 57090, 57125, 57126, 57127, 57129, 57130, 57131, 57133, 57138, 57144, 57145, 57146, 57148, 57149, 57150, 57176, 57176.1, 57177, 57177.5, 57178, 57179, 57200, 57201, 57302, 57303, 57379, 57384, 57402, and 57404 of, to amend the heading of Chapter 4 (commencing with Section 56800) of Part 3 of Division 3 of Title 5 of, to amend and renumber Sections 57053, 57079.5, 57082, 57082.5, 57083, 57083.5, 57084, 57085, 57086, 57087, 57087.5, 57087.7, 57088, 57089, 57091, 57092, 57093, 57100, 57101, 57102, 57103, 57103.1, and 57104 of, to amend, renumber, and add Section 56800 of, to add Sections 56020.5, 56020.7, 56037.5, 56038.5, 56100.1, 56325.1, 56327.3, 56332.5, 56375.3, 56381.6, 56425.5, 56430, 56655, 56657, 56658, 56660, 56661, 56662, 56663, 56664, 56665, 56666, 56667, 56668, 56668.5, 56700.1, 56700.4, 56803, 56815.2, 56848, and 57078.5 to, to add a heading as Article 1 (commencing with Section 56800) to, and to add Article 2 (commencing with Section 56810) and Article 3 (commencing with Section 56815) to, Chapter 4 of Part 3 of Division 3 of Title 5 of, to add Article 1 (commencing with Section 56820) to, to add a heading as Article 2 (commencing with Section 56825) to, to add Article 3 (commencing with Section 56859) to, to add Article 4 (commencing with Section 56864) to, and to add Article 5 (commencing with Section 56875) to, Chapter 5 of Part 3 of Division 3 of Title 5 of, to add a heading as Chapter 5 (commencing with Section 56820) to, to add Chapter 3 (commencing with Section 56720) and Chapter 6 (commencing with Section 56880)

to, Part 3 of Division 3 of Title 5 of, to add and repeal Section 56434 of, to repeal Sections 56022, 56108, 56109, 56110, 56111, 56111.1, 56111.5, 56111.6, 56111.7, 56111.9, 56111.10, 56111.11, 56111.12, 56111.13, 56111.14, 56112, 56113, 56114, 56330, 56375.1, 56375.4, 56375.45, 56426, 56656, 56700.3, 56700.5, 56701, 56702, 56800.3, 56827.5, 56828.5, 56833.1, 56833.3, 56833.5, 56839.1, 56840.5, 56842.2, 56842.5, 56842.6, 56842.7, 56844.1, 56844.2, 56848.3, 56848.5, 56850, 56851, 56852, 56852.3, 56852.5, 56858, 56859, 57004, 57005, 57006, 57079, and 57175 of, to repeal the heading of Chapter 5 (commencing with Section 56825) of Part 3 of Division 3 of Title 5 of, to repeal Chapter 5 (commencing with Section 56450) of, and Chapter 6 (commencing with Section 56475) of, Part 2 of Division 3 of Title 5 of, to repeal Chapter 3 (commencing with Section 56750) of Part 3 of Division 3 of Title 5 of, and to repeal and add Sections 56380, 56381, 56801, 56802, 56826, 56827, 56828, 56829, 56830, 56831, 56832, 56833, 56834, 56835, 56836, 56837, 56838, 56839, 56840, 56841, 56842, 56843, 56844, 56845, 56846, 56847, 56849, 56853, 56854, 56855, 56856, and 56857 of, the Government Code, and to amend Section 99 of the Revenue and Taxation Code, relating to local agencies.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 35700.5 is added to the Education Code, to read:

35700.5. Before initiating proceedings to consider any reorganization plan, the county committee on school district organization shall provide written notice of the proposed action to the local agency formation commission for the affected area.

SEC. 1.5. Section 35721 of the Education Code is amended to read:

35721. (a) On receipt of a petition signed by at least 10 percent of the qualified electors residing in any district for a consideration of unification or other reorganization of any area, the county committee shall hold a public hearing on the petition at a regular or special meeting.

(b) On receipt of a petition signed by at least 5 percent of the qualified electors residing in a school district with over 200,000 pupils in average daily attendance in which the petition is to reorganize the district into two or more districts, the county committee shall hold a public hearing on the petition at a regular or special meeting.

(c) On receipt of a resolution approved by a majority of the members of a city council, county board of supervisors, governing body of a special district, or local agency formation commission that has

jurisdiction over all or a portion of the school district for consideration of unification or other reorganization of any area, the county committee shall hold a public hearing on the proposal at a regular or special meeting.

(d) Following the hearing conducted pursuant to subdivision (a), (b), or (c), the county committee shall grant or deny the petition. If the county committee grants the petition, it shall adopt a tentative recommendation following which action it shall hold one or more public hearings in the area proposed for reorganization. The provisions of Sections 35705 and 35705.5 shall apply to any such public hearing.

SEC. 2. Section 35721.5 is added to the Education Code, to read:

35721.5. Before initiating proceedings to consider any reorganization plan, the county committee on school district organization shall provide written notice of the proposed action to the local agency formation commission for the affected area.

SEC. 3. Section 34880 of the Government Code is amended to read:

34880. (a) If the petition or proposal developed by the commission for submission to the electorate for incorporation or special reorganization of a city provides for the election of members of the legislative body by (or from) districts and includes substantially the provisions required to be included in an ordinance providing for that election, including Section 34871, the members of the legislative body shall be elected in the manner provided in the petition or proposal.

(b) The members of the legislative body shall hold office until the next general municipal election. At the next general municipal election the members elected by or from the even-numbered districts shall hold office for four years and the members elected by or from the odd-numbered districts shall hold office for two years. Thereafter the term of office is four years.

SEC. 3.5. Section 56000 of the Government Code is amended to read:

56000. This division shall be known and may be cited as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

SEC. 4. Section 56001 of the Government Code is amended to read:

56001. The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. The Legislature also recognizes that providing

housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.

The Legislature recognizes that urban population densities and intensive residential, commercial, and industrial development necessitate a broad spectrum and high level of community services and controls. The Legislature also recognizes that when areas become urbanized to the extent that they need the full range of community services, priorities are required to be established regarding the type and levels of services that the residents of an urban community need and desire; that community service priorities be established by weighing the total community service needs against the total financial resources available for securing community services; and that those community service priorities are required to reflect local circumstances, conditions, and limited financial resources. The Legislature finds and declares that a single multipurpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities especially in urban areas. Nonetheless, the Legislature recognizes the critical role of many limited purpose agencies, especially in rural communities. The Legislature also finds that, whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.

SEC. 5. Section 56020.5 is added to the Government Code, to read:

56020.5. ''Certificate of completion'' means the document prepared by the executive officer and recorded with the county recorder that confirms the final successful resolution of a change of organization or reorganization.

SEC. 6. Section 56020.7 is added to the Government Code, to read:

56020.7. ''Certificate of termination of proceedings'' means the document prepared by the executive officer and retained by the commission that indicates that a proposal for a change of organization or reorganization was terminated because of a majority written protest or rejection by voters in an election.

SEC. 7. Section 56022 of the Government Code is repealed.

SEC. 8. Section 56029 of the Government Code is amended to read:

56029. ''Conducting authority'' means the commission of the principal county of the entity proposing a change of organization or reorganization, unless another conducting authority is specified by law.

SEC. 9. Section 56036 of the Government Code is amended to read:

56036. (a) ''District'' or ''special district'' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. ''District'' or ''special district'' includes a county service area, but excludes all of the following:

(1) The state.

(2) A county.

(3) A city.

(4) A school district or a community college district.

(5) A special assessment district.

(6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A service zone of a fire protection district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a ''district'' or a ''special district'' for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a ''district'' or a ''special district:''

(A) A unified or union high school library district.

(B) A bridge and highway district.

(C) A joint highway district.

(D) A transit or rapid transit district.

(E) A metropolitan water district.

(F) A separation of grade district.

(2) Any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.

(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a ''district'' or ''special district'' for purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a ''district'' or ''special district'' if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a ''district'' or ''special district.''

(A) A flood control district.

(B) A flood control and floodwater conservation district.

(C) A flood control and water conservation district.

(D) A conservation district.

(E) A water conservation district.

(F) A water replenishment district.

(G) The Orange County Water District.

(H) A California water storage district.

(I) A water agency.

(J) A county water authority or a water authority.

(2) If the commission determines that an entity described in paragraph (1) is not a ''district'' or ''special district,'' any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.

SEC. 10. Section 56037.5 is added to the Government Code, to read:

56037.5. ''Elections official'' shall have the same meaning as in Section 320 of the Elections Code.

SEC. 11. Section 56038 of the Government Code is amended to read:

56038. ''Executive officer'' means the executive officer appointed by a commission.

SEC. 12. Section 56038.5 is added to the Government Code, to read:

56038.5. ''Feasible'' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, legal, social, and technological factors.

SEC. 13. Section 56046 of the Government Code is amended to read:

56046. ''Inhabited territory'' means territory within which there reside 12 or more registered voters. The date on which the number of registered voters is determined is the date of the adoption of a resolution of application by the legislative body pursuant to Section 56654, if the legislative body has complied with subdivision (b) of that section, or the date a petition or other resolution of application is accepted for filing and a certificate of filing is issued by the executive officer. All other territory shall be deemed ''uninhabited.''

SEC. 14. Section 56048 of the Government Code is amended to read:

56048. (a) Except as otherwise provided in subdivision (b) or (c), ''landowner'' or ''owner of land'' means all of the following:

(1) Any person shown as the owner of land on the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application except where that person is no longer the owner. Where that person is no longer the owner, the landowner or owner of land is any person entitled to be shown as owner of land on the next assessment roll.

(2) Where land is subject to a recorded written agreement of sale, any person shown in the agreement as purchaser.

(3) Any public agency owning land.

(b) ''Landowner'' or ''owner of land'' does not include a public agency which owns highways, rights-of-way, easements, waterways, or canals.

(c) For the purpose of mailed notice provided pursuant to Section 56157, ''landowner'' or ''owner of land'' means each person to whom land is assessed, as shown upon the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application, at the address shown upon that assessment roll.

SEC. 15. Section 56064 of the Government Code is amended to read:

56064. ''Prime agricultural land'' means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

(a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.

(b) Land that qualifies for rating 80 through 100 Storie Index Rating.

(c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars ($400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four

hundred dollars ($400) per acre for three of the previous five calendar years.

SEC. 16. Section 56067 of the Government Code is amended to read:

56067. ''Proceeding,'' ''proceeding for a change of organization,'' or ''proceeding for a reorganization'' means proceedings taken by the commission for a proposed change of organization or reorganization pursuant to Part 4 (commencing with Section 57000).

SEC. 17. Section 56068 of the Government Code is amended to read:

56068. ''Proponent'' means the person or persons who file a notice of intention to circulate a petition with the executive officer.

SEC. 18. Section 56069 of the Government Code is amended to read:

56069. ''Proposal'' means a request or statement of intention made by petition or by resolution of application of a legislative body or of a school district proposing proceedings for the change of organization or reorganization described in the request or statement of intention.

SEC. 19. Section 56074 of the Government Code is amended to read:

56074. ''Service'' means a class established within, and as a part of, a single function, as provided by regulations adopted by the commission pursuant to Chapter 5 (commencing with Section 56820) of Part 3.

SEC. 21. Section 56100 of the Government Code is amended to read:

56100. Except as otherwise provided in paragraph (2) of subdivision (b) of Section 56036, paragraph (2) of subdivision (c) of Section 56036, and Section 56101, this division provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. All changes of organization and reorganizations shall be initiated, conducted, and completed in accordance with, and as provided in, this division.

Notwithstanding any other provision of law, proceedings for the formation of a district shall be conducted as authorized by the principal act of the district proposed to be formed, except that the commission shall serve as the conducting authority and the procedural requirements of this division shall apply and shall prevail in the event of conflict with the procedural requirements of the principal act of the district. In the event of such a conflict, the commission shall specify the procedural requirements that apply, consistent with the requirements of this section.

SEC. 21.5. Section 56100.1 is added to the Government Code, to read:

56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's website, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure required by Title 9 (commencing with Section 81000) or by local ordinance.

SEC. 22. Section 56101 of the Government Code is amended to read:

56101. This division does not apply to any proceeding for a change of organization or reorganization for which the application shall have been accepted for filing by the executive officer pursuant to Section 56658 prior to January 1, 2001. These pending proceedings may be continued and completed under, and in accordance with, the provisions of law under which the proceedings were commenced. The repeals, amendments, and additions made by the act enacting this division shall not apply to any of those pending proceedings, and, the laws existing prior to January 1, 2001, shall continue in full force and effect, as applied to those pending proceedings.

SEC. 23. Section 56106 of the Government Code is amended to read:

56106. Any provisions in this division governing the time within which an official or the commission is to act shall in all instances, except for notice requirements and the requirements of subdivision (i) of Section 56658, be deemed directory, rather than mandatory.

SEC. 24. Section 56107 of the Government Code is amended to read:

56107. (a) This division shall be liberally construed to effectuate its purposes. No change of organization or reorganization ordered under this division and no resolution adopted by the commission making determinations upon a proposal shall be invalidated because of any defect, error, irregularity, or omission in any act, determination, or procedure which does not adversely and substantially affect the rights of any person, city, county, district, the state, or any agency or subdivision of the state.

(b) All determinations made by a commission under, and pursuant to, this division shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion.

(c) In any action or proceeding to attack, review, set aside, void, or annul a determination by a commission on grounds of noncompliance with this division, any inquiry shall extend only to whether there was fraud or a prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the court finds that the determination or decision is not supported by substantial evidence in light of the whole record.

SEC. 25. Section 56108 of the Government Code is repealed.

SEC. 26. Section 56109 of the Government Code is repealed.

SEC. 27. Section 56110 of the Government Code is repealed.

SEC. 28. Section 56111 of the Government Code is repealed.

SEC. 29. Section 56111.1 of the Government Code is repealed.

SEC. 30. Section 56111.5 of the Government Code is repealed.

SEC. 31. Section 56111.6 of the Government Code is repealed.

SEC. 32. Section 56111.7 of the Government Code is repealed.

SEC. 33. Section 56111.9 of the Government Code is repealed.

SEC. 34. Section 56111.10 of the Government Code is repealed.

SEC. 35. Section 56111.11 of the Government Code is repealed.

SEC. 36. Section 56111.12 of the Government Code is repealed.

SEC. 37. Section 56111.13 of the Government Code is repealed.

SEC. 38. Section 56111.14 of the Government Code is repealed.

SEC. 39. Section 56112 of the Government Code is repealed.

SEC. 40. Section 56113 of the Government Code is repealed.

SEC. 41. Section 56114 of the Government Code is repealed.

SEC. 42. Section 56122 of the Government Code is amended to read:

56122. Section 56886 and any term and condition provided by, or made pursuant to, that section shall be enforceable by, between, among, and against any public agency or agencies designated in the term and condition, but shall not constitute, or be given effect as, a limitation upon the power of any bondholder or other creditor to enforce his or her rights, particularly any rights provided for by Part 5 (commencing with Section 57300), as if Section 56886 had not been enacted or the term and condition had not been made or provided pursuant to that section.

SEC. 43. Section 56123 of the Government Code is amended to read:

56123. Except as otherwise provided in Section 56124, if a proposed change of organization or a reorganization applies to two or more affected counties, for the purpose of this division, exclusive jurisdiction shall be vested in the commission of the principal county. Any notices, proceedings, orders, or any other acts authorized or required to be given, taken, or made by the commission, board of supervisors, clerk of a county, or any other county official, shall be given, taken, or made by the persons holding those offices in the principal county. The commission of the principal county shall provide notice to

the chair, each board member, and the executive officer of all affected agencies of any proceedings, actions, or reports on the proposed change of organization or reorganization. Any officer of a county other than the principal county shall cooperate with the commission of the principal county and shall furnish the commission of the principal county with any certificates, records, or certified copies of records as may be necessary to enable the commission of the principal county to comply with this division.

SEC. 44. Section 56124 of the Government Code is amended to read:

56124. If a proposed change of organization or a reorganization applies to two or more affected counties, for purposes of this division, exclusive jurisdiction may be vested in the commission of an affected county other than the commission of the principal county if all of the following occur:

(a) The commission of the principal county approves of having exclusive jurisdiction vested in another affected county.

(b) The commission of the principal county designates the affected county which shall assume exclusive jurisdiction.

(c) The commission of the affected county so designated agrees to assume exclusive jurisdiction.

If exclusive jurisdiction is vested in the commission of an affected county other than the principal county pursuant to this section, any notices, proceedings, orders, or any other acts authorized or required to be given, taken, or made by the commission, board of supervisors, clerk of a county, or any other officer of a county, shall be given, taken, or made by the persons holding those offices in the affected county. Any officer of a county other than the affected county shall cooperate with the commission of the affected county and shall furnish the commission of the affected county with any certificates, records, or certified copies of records as may be necessary to enable the commission of the affected county to comply with this division.

SEC. 45. Section 56129 of the Government Code is amended to read:

56129. (a) If a public utility has been granted a certificate of public convenience and necessity authorizing and requiring it to furnish gas or electric service within a certain service area and, as a result of a change of organization or a reorganization, territory consisting of all, or any part, of that service area becomes a part of, or is formed into, a district authorized by its principal act to furnish gas or electric service, the district shall not furnish that service within the territory except upon approval by both of the following:

(1) The commission after receipt and consideration of the report of the Public Utilities Commission made as provided in Section 56131.

(2) The voters within the territory, given at an election as provided in Section 56130.

(b) If both of those approvals are given, upon assumption of service by the district the public utility may at any time thereafter withdraw service within the territory, unless otherwise ordered by the Public Utilities Commission.

(c) ''Gas or electric service,'' as used in this section and in Sections 56130, 56131, and 56875, means the distribution and sale for any purpose, other than for the purpose of resale, of gas or electricity for light, heat, or power.

SEC. 46. Section 56132 of the Government Code is amended to read:

56132. (a) This section shall only apply to any change of organization or reorganization that includes detachment of territory from the Broadmoor Police Protection District in the County of San Mateo and which includes or accommodates, or is intended to facilitate, an annexation of territory to another local agency that has initiated the change of organization or reorganization. This section does not, however, apply to any territory comprising real property owned by the San Francisco Bay Area Rapid Transit District.

If the commission adopts a resolution approving such a change of organization or reorganization, the board of commissioners of the district may, within 15 days thereafter, adopt a resolution finding either that the proposed detachment may or will not adversely affect the district's ability to efficiently provide its law enforcement services in the remainder of the district. The district shall, if it adopts a resolution, file a certified copy of its resolution with the local agency to which the affected territory is proposed to be annexed and the commission. If that resolution finds that the proposed detachment may have an adverse financial effect, then the reorganization shall not become effective unless a majority of the voters voting at a special election of the district called for that purpose approve the detachment. The Broadmoor Police Protection District shall pay the costs of the election. For purposes of this section, it shall be conclusively presumed that any affected local agency which adopts a resolution under Section 56654 requesting a detachment of contiguous territory from the Broadmoor Police Protection District and which could have concurrently requested annexation of the affected territory, intends to do so.

(b) 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 following special circumstances:

The Broadmoor Police Protection District consists primarily of suburban residential properties which have long enjoyed an urban level

of police services. The threat of continued piecemeal detachments of territory from the district threatens its ability to continue providing that level of service on an economically efficient basis.

(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 prior to January 1, 2002, deletes or extends that date.

SEC. 47. 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) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. 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. 48. Section 56150 of the Government Code is amended to read:

56150. Unless the provision or context otherwise requires, whenever this division requires notice to be published, posted, or mailed, the notice shall be published, posted, or mailed as provided in this chapter. Unless the provision or context otherwise requires, whenever this division requires notice to be given that notice shall also be given in electronic format on a website provided by the commission, to the extent that the commission maintains a website.

SEC. 50. Section 56154 of the Government Code is amended to read:

56154. If the published notice is a notice of a hearing, publication of the notice shall be commenced at least 21 days prior to the date specified in the notice for the hearing.

SEC. 51. Section 56156 of the Government Code is amended to read:

56156. If the mailed notice is notice of a hearing, the notice shall be mailed at least 21 days prior to the date specified in the notice for hearing.

SEC. 52. Section 56157 of the Government Code is amended to read:

56157. When mailed notice is required to be given to:

(a) A county, city, or district, it shall be addressed to the clerk of the county, city, or district.

(b) A commission, it shall be addressed to the executive officer.

(c) Proponents, it shall be addressed to the persons so designated in the petition at the address specified in the petition.

(d) Landowners, it shall be addressed to each person to whom land is assessed, as shown upon the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application, at the address shown upon the assessment roll.

(e) Persons requesting special notice, it shall be addressed to each person who has filed a written request for special notice with the executive officer or clerk at the mailing address specified in the request.

(f) To all registered voters and owners of property, to the address as shown on the most recent assessment roll being prepared by the county at the time a resolution of application is adopted to initiate proceedings within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to registered voters and landowners have already been provided by the initiating agency. Notice shall also either be posted or published in one newspaper 21 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice may instead be provided pursuant to paragraph (1) of subdivision (b) of Section 65954.6.

SEC. 53. Section 56159 of the Government Code is amended to read:

56159. Posted notice shall remain posted for not less than five days. If the posted notice is notice of a hearing, posting shall be commenced at least 21 days prior to the date specified in the notice for hearing and shall continue to the time of the hearing.

SEC. 54. Section 56300 of the Government Code is amended to read:

56300. (a) It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns.

(b) Each commission with a proposal pending on January 1, 2001, shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures to require the disclosure of contributions, expenditures, and independent expenditures authorized by Section 56100.1. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or a later date specified in the resolution. Any commission that does not have a proposal pending on

January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal or at any time prior to submission of a proposal. Once a hearing has taken place under this subdivision, no subsequent hearing shall be required except by petition of 100 or more registered voters residing in the county in which the commission is located.

(c) A commission may require, through the adoption of written policies and procedures, lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commission members, staff, or consultants. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission website, if applicable, or to the recorder, registrar of voters, or clerk of the board of supervisors of the county in which the commission is located. Each commission that on January 1, 2001, has a pending proposal, as defined in Section 56069 shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures governing lobbying disclosure authorized by this subdivision. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or on a later date specified in the resolution. Any commission that does not have a proposal pending on January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal, or at any time prior to submission of a proposal.

(d) Any public hearings required by this section may be held concurrently.

(e) The written policies and procedures adopted by the commission shall include forms to be used for various submittals to the commission including at a minimum a form for any protests to be filed with the commission concerning any proposed organization change.

(f) (1) On or before January 1, 2002, the commission shall establish and maintain, or otherwise provide access to notices and other commission information for the public through an Internet website.

(2) The written policies and procedures adopted by the commission shall require that, to the extent that the commission maintains an Internet website, notice of all public hearings and commission meetings shall be made available in electronic format on that site.

SEC. 55. Section 56301 of the Government Code is amended to read:

56301. Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the commission is to make studies and to obtain and furnish information which will

contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities. When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services.

SEC. 56. Section 56325 of the Government Code is amended to read:

56325. There is hereby continued in existence in each county a local agency formation commission. Except as otherwise provided in this chapter, the commission shall consist of members selected as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall be an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of a regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) Two selected by the cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee. The city selection committee shall also designate one alternate member who shall be appointed and serve pursuant to Section 56335. The alternate shall also be a mayor or council member. The city selection committee is encouraged to select members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(c) Two presiding officers or members of legislative bodies of independent special districts selected by the independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also designate a presiding officer or member of the legislative body of an independent special district as an alternative member who shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to make selections that fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

(d) One representing the general public appointed by the other members of the commission. The other members of the commission may

also designate one alternate member who shall be appointed and serve pursuant to Section 56331. Selection of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members selected by each of the other appointing authorities.

SEC. 57. Section 56325.1 is added to the Government Code, to read:

56325.1. While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.

SEC. 58. Section 56326 of the Government Code is amended to read:

56326. In Los Angeles County, the commission shall consist of nine members, selected as follows:

(a) Two appointed by the board of supervisors from its own membership. The board of supervisors shall also appoint a third supervisor who shall be an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One appointed by the board of supervisors, who shall not be a member of the board of supervisors but who shall be a resident of the San Fernando Valley Statistical Area, as defined in subdivision (c) of Section 11093. The board of supervisors shall also appoint an alternate member who shall not be a member of the board of supervisors but who is a resident of the San Fernando Valley Statistical Area. The alternate member may serve and vote in place of the member appointed pursuant to this subdivision if that member is absent or disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular member becomes vacant, the alternate member may serve and vote in place of the former regular member until the appointment and qualification of a regular member to fill the vacancy.

(c) Two selected by the cities in the county, each of whom shall be a mayor or council member, appointed by the city selection committee. The city selection committee shall also designate one alternate member who shall be appointed and serve pursuant to Section 56335. The

alternate shall also be a mayor or council member. The city selection committee is encouraged to select members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) One selected by a city in the county having a population in excess of 30 percent of the total population of the county who is a member of the legislative body of the city, appointed by the presiding officer of the legislative body. The presiding officer of the legislative body shall also designate an alternate member who is a member of the legislative body. The alternate member may serve and vote in place of the member appointed pursuant to this subdivision if the member is absent or disqualifies himself or herself from participating in a meeting of the commission.

If the office of the regular member becomes vacant, the alternate member may serve and vote in place of the former regular member until the appointment and qualification of a regular member to fill the vacancy.

(e) Two presiding officers or members of legislative bodies of independent special districts selected by an independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also designate one alternate member who shall be a presiding officer or member of the legislative body of an independent special district and shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to select members to fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

(f) One representing the general public appointed by the other members of the commission.

SEC. 59. Section 56326.5 of the Government Code is amended to read:

56326.5. In Sacramento County, the commission shall consist of seven members, selected as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall serve as an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One selected by the City of Sacramento who is a member of the city council, appointed by the mayor and confirmed by the city council.

The mayor shall also appoint, subject to confirmation by the council, an alternate member who is a member of the city council. The alternate member may serve and vote in place of the regular city member if the city member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) One selected by the cities in the county, who is a mayor or council member appointed by the city selection committee. The city selection committee shall also designate one alternate member who shall be appointed and serve pursuant to Section 56335. The alternate shall also be a mayor or council member. The city selection committee is encouraged to select members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) Two presiding officers or members of legislative bodies of independent special districts selected by an independent special district selection committee pursuant to Section 56332. The independent special district selection committee shall also designate one alternate member who shall be a presiding officer or member of the legislative body of an independent special district and shall be appointed and serve pursuant to Section 56332. The independent special district selection committee is encouraged to select members to fairly represent the diversity of the independent special districts in the county, with respect to population and geography.

(e) One representing the general public, appointed by the other six members of the commission. The commission may also appoint an alternate public member who may serve and vote in the place of the regular public member if the regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

SEC. 60. Section 56327 of the Government Code is amended to read:

56327. In Santa Clara County, the commission shall consist of five members, selected as follows:

(a) Two appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a third supervisor who shall serve as an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular

county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) One selected by the city in the county having the largest population, who is a member of the legislative body of the city, appointed by the city council. The city council shall also appoint an alternate member who is a member of the legislative body of the city. The alternate member may serve and vote in place of the regular city member if the city member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) One selected by the cities in the county, who is a mayor or council member appointed by the city selection committee. The city selection committee shall also designate one alternate member who shall be appointed and serve pursuant to Section 56335. The alternate shall also be a mayor or council member. The city selection committee is encouraged to select members to fairly represent the diversity of the cities in the county, with respect to population and geography.

(d) One representing the general public, appointed by the other four members of the commission. This member shall not be a resident of a city which is already represented on the commission. The commission may also appoint an alternate public member, who shall not be a resident of a city represented on the commission, and who may serve and vote in the place of the regular public member if the regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member becomes vacant, the alternate member may serve and vote in place of the former regular public member until the appointment and qualification of a regular public member to fill the vacancy.

SEC. 60.5. Section 56327.3 is added to the Government Code, to read:

56327.3. In Santa Clara County, the commission shall be enlarged by two members if, pursuant to the provisions of Chapter 5 (commencing with Section 56820), the commission orders representation of special districts upon the commission.

SEC. 61. Section 56328 of the Government Code is amended to read:

56328. (a) In San Diego County, the commission, which consists of seven members, augmented pursuant to Section 56332, shall be additionally augmented by the appointment of an eighth member and that member shall, notwithstanding subdivision (b) of Section 56325, be

a member of the legislative body of the city in the county having the largest population, appointed by the legislative body of that city.

(b) The legislative body of the city shall appoint an alternate member at the same time and in the same manner as it appoints the regular member appointed pursuant to subdivision (a). If the regular city member is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of the regular city member for that meeting. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

SEC. 62. Section 56329 of the Government Code is amended to read:

56329. If there is no city in the county, the commission shall consist of five members, selected as follows which may be further augmented pursuant to Sections 56332 and 56332.5:

(a) Three appointed by the board of supervisors from their own membership. The board of supervisors shall appoint a fourth supervisor who is an alternate member of the commission. The alternate member may serve and vote in place of any supervisor on the commission who is absent or who disqualifies himself or herself from participating in a meeting of the commission.

If the office of a regular county member becomes vacant, the alternate member may serve and vote in place of the former regular county member until the appointment and qualification of a regular county member to fill the vacancy.

(b) Two representing the general public appointed by the other three members of the commission. Selection of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members selected by each of the other appointing authorities.

SEC. 63. Section 56330 of the Government Code is repealed.

SEC. 64. Section 56332 of the Government Code is amended to read:

56332. (a) The independent special district selection committee shall consist of the presiding officer of the legislative body of each independent special district. However, if the presiding officer of an independent special district is unable to attend a meeting of the independent special district selection committee, the legislative body of the district may appoint one of its members to attend the meeting of the selection committee in the presiding officer's place. Those districts shall include districts located wholly within the county and those containing territory within the county representing 50 percent or more of the assessed value of taxable property of the district, as shown on the last

equalized county assessment roll. Each member of the committee shall be entitled to one vote for each independent special district of which he or she is the presiding officer. Members representing a majority of the eligible districts shall constitute a quorum.

(b) The executive officer shall call and give written notice of all meetings of the members of the selection committee. A meeting shall be called and held under either of the following circumstances:

(1) Whenever a vacancy exists among the members or alternate members representing independent special districts upon the commission.

(2) Upon receipt of a written request by one or more members of the selection committee representing districts having 10 percent or more of the assessed value of taxable property within the county, as shown on the last equalized county assessment roll.

(c) (1) If the executive officer determines that a meeting of the special district selection committee, for the purpose of selecting the special district representatives or for filling a vacancy, is not feasible, the executive officer may conduct the business of the committee in writing, as provided in this subdivision. The executive officer may call for nominations to be submitted in writing within 30 days. At the end of the nominating period, the executive officer shall prepare and deliver, or send by certified mail, to each independent special district one ballot and voting instructions.

(2) As an alternative to the delivery or certified mail, the executive officer, with the prior concurrence of the district, may transmit the ballot and voting instructions by electronic mail, provided that the executive officer shall retain written evidence of the receipt of that material.

(3) The ballot shall include the names of all nominees and the office for which each was nominated. The districts shall return the ballots to the executive officer by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer mailed the ballots to the districts.

(4) If the executive officer has transmitted the ballot and voting instructions by electronic mail, the districts may return the ballots to the executive officer by electronic mail, provided that the executive officer retains written evidence of the receipt of the ballot.

(5) Any ballot received by the executive officer after the specified date is invalid. The executive officer shall announce the results of the election within seven days of the specified date.

(d) The selection committee shall appoint two regular members and one alternate member to the commission. The members so appointed shall be elected or appointed special district officers residing within the county but shall not be members of the legislative body of a city or county. If one of the regular district members is absent from a

commission meeting or disqualifies himself or herself from participating in a meeting, the alternate district member may serve and vote in place of the regular district member for that meeting. The representation by a regular district member who is a special district officer shall not disqualify, or be cause for disqualification of, the member from acting on a proposal affecting the special district. The special district selection committee may, at the time it appoints a member or alternate, provide that the member or alternate is disqualified from voting on proposals affecting the district of which the member is a representative.

(e) If the office of a regular district member becomes vacant, the alternate member may serve and vote in place of the former regular district member until the appointment and qualification of a regular district member to fill the vacancy.

SEC. 65. Section 56332.5 is added to the Government Code, to read:

56332.5. If the commission does not have representation from independent special districts on January 1, 2001, the commission shall initiate proceedings for representation of independent special districts upon the commission if requested by independent special districts pursuant to this section. If an independent special district adopts a resolution proposing representation of independent special districts upon the commission, it shall immediately forward a copy of the resolution to the executive officer. Upon receipt of those resolutions from a majority of independent special districts within a county, adopted by the districts within one year from the date that the first resolution was adopted, the commission, at its next regular meeting, shall adopt a resolution of intention. The resolution of intention shall state whether the proceedings are initiated by the commission or by an independent special district or districts, in which case, the names of those districts shall be set forth. The commission shall order the executive officer to call and give notice of a meeting of the independent special district selection committee to be held within 15 days after the adoption of the resolution in order to select independent special district representation on the commission pursuant to Section 56332.

SEC. 66. Section 56334 of the Government Code is amended to read:

56334. The term of office of each member shall be four years and until the appointment and qualification of his or her successor. Upon enlargement of the commission by two members, as provided in Section 56332, the new members first appointed to represent independent special districts shall classify themselves by lot so that the expiration date of the term of office of one new member coincides with the existing member who holds the office represented by the original two-year term on the commission and of the other new member coincides with the

existing member who holds the office represented by the original four-year term on the commission. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which the term of the member expires, unless procedures adopted by the commission specify an alternate date to apply uniformly to all members. However, the length of a term of office shall not be extended more than once. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant.

The chairperson of the commission shall be selected by the members of the commission.

Commission members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The board of supervisors may authorize payment of a per diem to commission members and alternates for each day while they are in attendance at meetings of the commission.

SEC. 67. 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, consistent with written policies, procedures, and guidelines adopted by the commission. 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 Section 56375.3.

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. A commission shall require, 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. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and prezoning of the city.

(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 of unincorporated, noncontiguous territory, subject to the limitations of Section 56742, 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 annexation of the territory without notice and hearing.

(e) To approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and prezoning designations. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the

city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the commission.

(f) 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 elections official 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.

(g) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56668. Any standards adopted by the commission shall be written.

(h) 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).

(i) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(j) To incur usual and necessary expenses for the accomplishment of its functions.

(k) 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.

(*l*) 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.

(m) To waive the restrictions of Section 56744 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.

(n) 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.

(o) 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 56810.

(p) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

(q) To enter into an agreement with the commission for an adjoining county for the purpose of determining procedures for the consideration of proposals that may affect the adjoining county or where the jurisdiction of an affected agency crosses the boundary of the adjoining county.

SEC. 68. Section 56375.1 of the Government Code is repealed.

SEC. 68.5. Section 56375.3 is added to the Government Code, to read:

56375.3. (a) In addition to those powers enumerated in Section 56375, a commission may approve the annexation to a city after notice and hearing, and order annexation of the territory without an election, or waive the protest hearing proceedings pursuant to Part 4, commencing with Section 57000, 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.

(b) Notwithstanding any other provision of this subdivision, this subdivision shall not apply to all or any part of that portion of the development project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code that as of January 1, 2000, meets all of the following requirements:

(1) Is unincorporated territory.

(2) Contains at least 100 acres.

(3) Is surrounded or substantially surrounded by incorporated territory.

(4) 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.

SEC. 69. Section 56375.4 of the Government Code is repealed.

SEC. 69.5. Section 56375.5 of the Government Code is amended to read:

56375.5. Every determination made by a commission regarding the matters provided for by subdivisions (a), (m), and (n) of Section 56375 shall be consistent with the spheres of influence of the local agencies affected by those determinations.

SEC. 70. Section 56375.45 of the Government Code is repealed.

SEC. 71. Section 56377 of the Government Code is amended to read:

56377. In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses, the commission shall consider all of the following policies and priorities:

(a) Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

(b) Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses

which are outside of the existing jurisdiction of the local agency or outside of the existing sphere of influence of the local agency.

SEC. 72. Section 56380 of the Government Code is repealed.

SEC. 73. Section 56380 is added to the Government Code, to read:

56380. The commission shall make its own provision for necessary quarters, equipment, and supplies as well as personnel. The commission may choose to contract with any public agency or private party for personnel and facilities.

SEC. 74. Section 56381 of the Government Code is repealed.

SEC. 75. Section 56381 is added to the Government Code, to read:

56381. (a) The commission shall adopt annually, following noticed public hearings, a proposed budget by May 1 and final budget by June 15. At a minimum, the proposed and final budget shall be equal to the budget adopted for the previous fiscal year unless the commission finds that reduced staffing or program costs will nevertheless allow the commission to fulfill the purposes and programs of this chapter. The commission shall transmit its proposed and final budgets to the board of supervisors; to each city; to the clerk and chair of the city selection committee, if any, established in each county pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1; to each independent special district; and to the clerk and chair of the independent special district selection committee, if any, established pursuant to Section 56332.

(b) After public hearings, consideration of comments, and adoption of a final budget by the commission pursuant to subdivision (a), the auditor shall apportion the net operating expenses of a commission in the following manner:

(1) In counties in which there is city and independent special district representation on the commission, the county, cities, and independent special districts shall each provide a one-third share of the commission's operational costs. The cities' share shall be apportioned in proportion to each city's total revenues, as reported in the most recent edition of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county, or by an alternative method approved by a majority of cities representing the majority of the combined cities' populations. The independent special districts' share shall be apportioned in a similar manner according to each district's revenues for general purpose transactions, as reported in the most recent edition of the ''Financial Transactions Concerning Special Districts'' published by the Controller, or by an alternative method approved by a majority of the agencies, representing a majority of their combined populations. For the purposes of fulfilling the requirement of this section, a multicounty independent special district shall be required to pay its apportionment in its principal county. It is the intent of the

Legislature that no single district or class or type of district shall bear a disproportionate amount of the district share of costs.

(2) In counties in which there is no independent special district representation on the commission, the county and its cities shall each provide a one-half share of the commission's operational costs. The cities' share shall be apportioned in the manner described in paragraph (1).

(3) In counties in which there are no cities, the county and its special districts shall each provide a one-half share of the commission's operational costs. The independent special districts' share shall be apportioned in the manner described for cities' apportionment in paragraph (1). If there is no independent special district representation on the commission, the county shall pay all of the commission's operational costs.

(4) Instead of determining apportionment pursuant to paragraph (1), (2), or (3), any alternative method of apportionment of the net operating expenses of the commission may be used if approved by a majority vote of each of the following: the board of supervisors; a majority of the cities representing a majority of the total population of cities in the county; and the independent special districts representing a majority of the combined total population of independent special districts in the county.

(c) After apportioning the costs as required in subdivision (b), the auditor shall request payment from the board of supervisors and from each city and each independent special district no later than July 1 of each year for the amount that entity owes and the actual administrative costs incurred by the auditor in apportioning costs and requesting payment from each entity. If the county, a city, or an independent special district does not remit its required payment within 60 days, the commission may determine an appropriate method of collecting the required payment, including a request to the auditor to collect an equivalent amount from the property tax, or any fee or eligible revenue owed to the county, city, or district. The auditor shall provide written notice to the county, city, or district prior to appropriating a share of the property tax or other revenue to the commission for the payment due the commission pursuant to this section. Any expenses incurred by the commission or the auditor in collecting late payments or successfully challenging nonpayment shall be added to the payment owed to the commission. Between the beginning of the fiscal year and the time the auditor receives payment from each affected city and district, the board of supervisors shall transmit funds to the commission sufficient to cover the first two months of the commission's operating expenses as specified by the commission. When the city and district payments are received by the commission, the county's portion of the commission's annual operating expenses shall be credited with funds already received from the county.

If, at the end of the fiscal year, the commission has funds in excess of what it needs, the commission may retain those funds and calculate them into the following fiscal year's budget. If, during the fiscal year, the commission is without adequate funds to operate, the board of supervisors may loan the commission funds and recover those funds in the commission's budget for the following fiscal year.

SEC. 75.5. Section 56381.6 is added to the Government Code, to read:

56381.6. (a) Notwithstanding the provisions of Section 56381, for counties whose membership on the commission is established pursuant to Sections 56326, 56326.5, 56327, or 56328, the commission's annual operational costs shall be apportioned among the classes of public agencies that select members on the commission in proportion to the number of members selected by each class. The classes of public agencies that may be represented on the commission are the county, the cities, and independent special districts. Any alternative cost apportionment procedure may be adopted by the commission, subject to a majority affirmative vote of the commission that includes the affirmative vote of at least one of the members selected by the county, one of the members selected by a city, and one of the members selected by a special district, if special districts are represented on the commission.

(b) Allocation of costs among individual cities and independent special districts and remittance of payments shall be in accordance with the procedures of Section 56381. Notwithstanding Section 56381, any city that has permanent membership on the commission pursuant to Sections 56326, 56326.5, 56327, or 56328 shall be apportioned the same percentage of the commission's annual operational costs as its permanent member bears to the total membership of the commission, excluding any public members selected by all the members. The balance of the cities' portion of the commission's annual operational costs shall be apportioned to the remaining cities in the county in accordance with the procedures of Section 56381.

SEC. 76. Section 56383 of the Government Code is amended to read:

56383. (a) The commission may establish a schedule of fees for the costs of proceedings taken pursuant to this division, including, but not limited to, all of the following:

(1) Filing and processing applications filed with the commission.

(2) Proceedings undertaken by the commission and any reorganization committee.

(3) Amending a sphere of influence.

(4) Reconsidering a resolution making determinations.

(b) The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016.

(c) The commission may require that a fee be deposited with the executive officer before any further action is taken. The deposit of the fee shall be made within the time period specified by the commission. No petition shall be deemed filed until the fee has been deposited.

(d) The commission may waive a fee if it finds that payment would be detrimental to the public interest.

(e) The signatures on a petition submitted to the commission shall be verified by the elections official of the county and the costs of verification shall be provided for in the same manner and by the same agencies which bear the costs of verifying signatures for an initiative petition in the same county.

(f) Waiver of fees is limited to those costs incurred by the commission in the processing of a proposal.

(g) For incorporation proceedings that have been initiated by the filing of a sufficient number of voter signatures on petitions that have been verified by the county registrar of voters, the commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees for the proceedings, take no action on the proposal and request a loan from the General Fund of an amount sufficient to cover those expenses subject to availability of an appropriation for those purposes and in accordance with any provisions of the appropriation. Repayment of the loan shall be made a condition of approval of the incorporation, if successful, and shall become an obligation of the newly formed city. Repayment shall be made within two years of the effective date of incorporation. If the proposal is denied by the commission or defeated at an election, the loan shall be forgiven.

SEC. 77. Section 56384 of the Government Code is amended to read:

56384. (a) The commission shall appoint an executive officer who shall conduct and perform the day-to-day business of the commission. If the executive officer is subject to a conflict of interest on a matter before the commission, the commission shall appoint an alternate executive officer. The commission may recover its costs by charging fees pursuant to Section 56383.

(b) The commission shall appoint legal counsel to advise it. If the commission's counsel is subject to a conflict of interest on a matter before the commission, the commission shall appoint alternate legal counsel to advise it. The commission may recover its costs by charging fees pursuant to Section 56383.

(c) The commission may appoint staff as it deems appropriate. If staff for the commission is subject to a conflict of interest on a matter before

the commission, the commission shall appoint alternate staff to assist it. The commission may recover its costs by charging fees pursuant to Section 56383.

(d) For purposes of this section, the term ''conflict of interest'' shall be defined as it is for the purpose of the Political Reform Act of 1974 and shall also include matters proscribed by Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1.

SEC. 78. Section 56386 of the Government Code is amended to read:

56386. (a) The officers and employees of a city, county, or special district, including any local agency, school district, community college district, and any regional agency, or state agency or department, as may be necessary, or any other public agency shall furnish the executive officer with any records or information in their possession which may be necessary to assist the commission and the executive officer in their duties, including, but not limited to, the preparation of reports pursuant to Sections 56665 and 56800.

(b) Upon request by the commission or the executive officer, the county surveyor, or any other county officer, county official, or employee as the board of supervisors may designate, shall examine and report to the commission or the executive officer upon any application or other document involving any of the matters specified in subdivision (j) of Section 56375.

SEC. 79. Section 56425 of the Government Code is amended to read:

56425. (a) In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere.

(b) At least 30 days prior to submitting an application to the commission for a determination of a new sphere of influence, or to update an existing sphere of influence for a city, representatives from the city shall meet with county representatives to discuss the proposed sphere, and its boundaries, and explore methods to reach agreement on the boundaries, development standards, and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere. If no agreement is reached between the city and county within 30 days, then the parties may, by mutual agreement, extend

discussions for an additional period of 30 days. If an agreement is reached between the city and county regarding the boundaries, development standards, and zoning requirements within the proposed sphere, the agreement shall be forwarded to the commission, and the commission shall consider and adopt a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section, and the commission shall give great weight to the agreement in the commission's final determination of the city sphere.

(c) If the commission's final determination is consistent with the agreement reached between the city and county pursuant to subdivision (b), the agreement shall be adopted by both the city and county after a noticed public hearing. Once the agreement has been adopted by the affected local agencies and their respective general plans reflect that agreement, then any development approved by the county within the sphere shall be consistent with the terms of that agreement.

(d) If no agreement is reached pursuant to subdivision (b), the application may be submitted to the commission and the commission shall consider a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section.

(e) In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determinations with respect to each of the following:

(1) The present and planned land uses in the area, including agricultural and open-space lands.

(2) The present and probable need for public facilities and services in the area.

(3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

(4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

(f) Upon determination of a sphere of influence, the commission shall adopt that sphere, and shall review and update, as necessary, the adopted sphere not less than once every five years.

(g) The commission may recommend governmental reorganizations to particular agencies in the county, using the spheres of influence as the basis for those recommendations. Those recommendations shall be made available, upon request, to other agencies or to the public. The commission shall make all reasonable efforts to ensure wide public dissemination of the recommendations.

(h) For any sphere of influence or a sphere of influence that includes a special district, the commission shall do all of the following:

(1) Require existing districts to file written statements with the commission specifying the functions or classes of services provided by those districts.

(2) Establish the nature, location, and extent of any functions or classes of services provided by existing districts.

(3) Determine that, except as otherwise authorized by the regulations, no new or different function or class of service shall be provided by any existing district, except upon approval by the commission.

(i) Subdivisions (b), (c), and (d) shall become inoperative as of January 1, 2007, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends that date.

SEC. 79.5. Section 56425.5 is added to the Government Code, to read:

56425.5. (a) A determination of a city's sphere of influence, in any case where that sphere of influence includes any portion of the redevelopment project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code, shall not preclude any other local agency, as defined in Section 54951, including the redevelopment agency referenced in Section 33492.41 of the Health and Safety Code, in addition to that city, from providing facilities or services related to development, as defined in subdivision (e) of Section 56426, to or in that portion of the redevelopment project area that, as of January 1, 2000, meets all of the following requirements:

(1) Is unincorporated territory.

(2) Contains at least 100 acres.

(3) Is surrounded or substantially surrounded by incorporated territory.

(4) 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.

(b) Facilities or services related to development may be provided by other local agencies to all or any portion of the area defined in paragraphs (1) to (4), inclusive, of subdivision (a). Subdivision (a) shall apply regardless of whether the determination of the sphere of influence is made before or after January 1, 2000.

SEC. 80. Section 56426 of the Government Code is repealed.

SEC. 80.5. Section 56429 of the Government Code is amended to read:

56429. (a) Notwithstanding Sections 56425, 56427, and 56428, a petition for removal of territory from a sphere of influence determination may be brought pursuant to this section by landowners within the redevelopment project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code, if, at the time the petition is

submitted, the area for which the petition is being requested meets all of the following requirements:

(1) Is unincorporated territory.

(2) Contains at least 100 acres.

(3) Is surrounded or substantially surrounded by incorporated territory.

(4) 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.

(b) On receipt of a petition signed by landowners owning at least 25 percent of the assessed value of the land within the affected territory, the commission shall hear and consider oral or written testimony.

(c) The petition shall be placed on the agenda of the commission in accordance with subdivision (b) of Section 56428.

(d) The executive officer shall give notice of the hearing in accordance with Section 56427.

(e) From the date of filing of the petition to the conclusion of the hearing, the commission shall accept written positions from any owner of land in the unincorporated territory that is seeking removal from a city's sphere of influence.

(f) The petition to remove territory from a city's sphere of influence shall be granted and given immediate effect if the commission finds that written positions filed in favor of the petition and not withdrawn prior to the conclusion of the hearing represent landowners owning 50 percent or more of the assessed value of the land within the affected territory.

(g) No removal of territory from a city's sphere of influence that is proposed by petition and adopted pursuant to this section shall be repealed or amended except by the petition and adoption procedure provided in subdivisions (a) to (f), inclusive. In all other respects, a removal of territory from a city's sphere of influence proposed by petition and adopted pursuant to this section shall have the same force and effect as any amendment to or removal of territory from a city's sphere of influence approved by the commission. No territory removed from a city's sphere of influence pursuant to this section shall be annexed to that city, unless the territory is subsequently added to the sphere of influence of the city pursuant to the petition and adoption procedure provided in this section.

(h) Pursuant to Section 56383, the commission may establish a schedule of fees for the costs of carrying out this section.

(i) All proper expenses incurred in connection with removal of territory from a city's sphere of influence pursuant to this section shall be paid by the proponents.

SEC. 81. Section 56430 is added to the Government Code, to read:

56430. (a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

(1) Infrastructure needs or deficiencies.

(2) Growth and population projections for the affected area.

(3) Financing constraints and opportunities.

(4) Cost avoidance opportunities.

(5) Opportunities for rate restructuring.

(6) Opportunities for shared facilities.

(7) Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.

(8) Evaluation of management efficiencies.

(9) Local accountability and governance.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area.

(c) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or Section 56426.5 or to update a sphere of influence pursuant to Section 56425.

(d) Not later than July 1, 2001, the Office of Planning and Research, in consultation with commissions, the California Association of Local Agency Formation Commissions, and other local governments, shall prepare guidelines for the service reviews to be conducted by commissions pursuant to this section.

SEC. 82. Section 56434 is added to the Government Code, to read:

56434. (a) The commission may review and approve a proposal that extends services into previously unserved territory within unincorporated areas and may review the creation of new service providers to extend urban type development into previously unserved territory within unincorporated areas to ensure that the proposed extension is consistent with the policies of Sections 56001, 56300, 56301, and the adopted policies of the commission implementing these sections, including promoting orderly development, discouraging urban sprawl, preserving open space and prime agricultural lands, providing housing for persons and families of all incomes, and the efficient extension of governmental services.

(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. 83. Chapter 5 (commencing with Section 56450) of Part 2 of Division 3 of Title 5 of the Government Code is repealed.

SEC. 84. Chapter 6 (commencing with Section 56475) of Part 2 of Division 3 of Title 5 of the Government Code is repealed.

SEC. 86. Section 56653 of the Government Code is amended to read:

56653. (a) Whenever a local agency or school district submits a resolution of application for a change of organization or reorganization pursuant to this part, the local agency shall submit with the resolution of application a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

(1) An enumeration and description of the services to be extended to the affected territory.

(2) The level and range of those services.

(3) An indication of when those services can feasibly be extended to the affected territory.

(4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.

(5) Information with respect to how those services will be financed.

SEC. 87. Section 56655 is added to the Government Code, to read:

56655. If two or more proposals pending before the commission conflict or in any way are inconsistent with each other, as determined by the commission, the commission may determine the relative priority for conducting any further proceedings based on any of those proposals. That determination shall be included in the terms and conditions imposed by the commission. In the absence of that determination, priority is given to that proceeding which shall be based upon the proposal first filed with the executive officer.

SEC. 88. Section 56656 of the Government Code is repealed.

SEC. 89. Section 56657 is added to the Government Code, to read:

56657. Notwithstanding Section 56655, the commission shall not approve a proposal for incorporation, consolidation of districts, dissolution, merger, or establishment of a subsidiary district, or a reorganization that includes any of these changes of organization until it has considered any other change of organization which conflicts with the subject proposal and which was submitted to the commission within 60 days of the submission of the subject proposal.

SEC. 90. Section 56658 is added to the Government Code, to read:

56658. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency, each subject agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(c) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(d) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources Code, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(e) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section 56663 or in the case of an application for which a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(f) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(g) When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant. A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(h) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(i) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

SEC. 90.5. Section 56658 is added to the Government Code, to read:

56658. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) (1) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency, each subject agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(2) It is the intent of the Legislature that an incorporation proposal shall be processed in a timely manner. With regard to an application that includes an incorporation, the executive officer shall immediately notify all affected local agencies and any applicable state agencies by mail and request the affected agencies to submit the required data to the commission within a reasonable timeframe established by the executive officer. Each affected agency shall respond to the executive officer within 15 days acknowledging receipt of the request. Each affected local agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines established by the executive officer. Each affected state agency and the officers and departments thereof shall submit the required data to the executive officer within the timelines agreed upon by the executive officer and the affected state departments.

(c) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(d) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources Code, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(e) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section 56663 or in the case of an application for which a local agency has already given notice pursuant to subdivision (b) of Section 56654.

(f) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(g) When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant. A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(h) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(i) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

SEC. 91. Section 56660 is added to the Government Code, to read:

56660. The executive officer shall give notice of any hearing by the commission by publication, as provided in Sections 56153 and 56154, and by posting, as provided in Sections 56158 and 56159.

SEC. 92. Section 56661 is added to the Government Code, to read:

56661. To the extent that the commission maintains an Internet website, notice of all public hearings shall be made available in

electronic format on that site. The executive officer shall also give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing or transmitting by electronic mail, if available to the recipient, to all of the following persons and entities:

(a) To each affected local agency by giving notice to each elected local official, each member of the governing body, and the executive officer of the agency.

(b) To the proponents, if any.

(c) To each person who has filed a written request for special notice with the executive officer.

(d) If the proposal is for any annexation or detachment, or for a reorganization providing for the formation of a new district, to each city within three miles of the exterior boundaries of the territory proposed to be annexed, detached, or formed into a new district.

(e) If the proposal is to incorporate a new city or for the formation of a district, to the affected county.

(f) If the proposal includes the formation of, or annexation of territory to, a fire protection district formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and all or part of the affected territory has been classified as a state responsibility area, to the Director of Forestry and Fire Protection.

(g) If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), to the Director of Conservation.

(h) To all registered voters and owners of property, as shown on the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application, within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 20 days prior to the hearing. In lieu of the assessment roll, the agency may use the records of the county assessor or tax collector or any other more current record. Notice shall also either be posted or published in one newspaper 20 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice may instead be provided pursuant to paragraph (1) of subdivision (b) of Section 65954.6.

SEC. 93. Section 56662 is added to the Government Code, to read:

56662. (a) The commission may make either of the following determinations without notice and hearing:

(1) Subject to the limitations of Section 56663, approval or disapproval of a proposal for an annexation, detachment, or

reorganization which consists solely of annexations or detachments, or both.

(2) Subject to the limitations of Section 56663, approval or disapproval of the formation of a county service area.

(b) Except for the determinations authorized to be made by subdivision (a), the commission shall not make any determinations upon any proposal, plan of reorganization, or report and recommendation of a reorganization committee until after public hearing by the commission on that proposal, plan of reorganization, or report and recommendation of a reorganization committee.

SEC. 94. Section 56663 is added to the Government Code, to read:

56663. (a) If a petition for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is signed by all of the owners of land within the affected territory of the proposed change of organization or reorganization, or if a resolution of application by a legislative body of an affected district, affected county, or affected city making a proposal for an annexation or detachment, or for a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to that change of organization or reorganization, the commission may approve or disapprove the change of organization or reorganization, without notice and hearing by the commission. In those cases, the commission may also approve and conduct proceedings for the change of organization or reorganization under any of the following conditions:

(1) Without notice and hearing.

(2) Without an election.

(3) Without notice, hearing, or an election.

(b) The executive officer shall give any affected agency mailed notice of the filing of the petition or resolution of application initiating proceedings by the commission. The commission shall not, without the written consent of the subject agency, take any further action on the petition or resolution of application for 10 days following that mailing. Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application. If no written demand is filed, the commission may make those determinations without notice and hearing. By written consent, which may be filed with the executive officer at any time, a subject agency may do any of the following:

(1) Waive the requirement of mailed notice.

(2) Consent to the commission making determinations without notice and hearing.

(3) Waive the requirement of mailed notice and consent to the commission making determinations without notice and hearing.

(c) In the case of uninhabited territory, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if all of the following conditions apply:

(1) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization.

(2) All affected local agencies that will gain or lose territory as a result of the change of organization or reorganization have consented in writing to a waiver of protest proceedings.

(3) The commission has provided written notice of commission proceedings to all property owners and registered voters within the subject territory and no opposition is received prior to or during the commission meeting.

(d) In the case of inhabited city and district annexations or detachments, or both, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:

(1) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no opposition from registered voters or landowners within the affected territory is received prior to or during the commission meeting. The written notice shall disclose to the registered voters and landowners that unless opposition is expressed regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings.

(2) All affected local agencies that will gain or lose territory as a result of the change of organization or reorganization have consented in writing to a waiver of protest proceedings.

SEC. 95. Section 56664 is added to the Government Code, to read:

56664. Where the commission desires to provide for notice and hearing prior to making a determination on a matter which the commission is authorized, but not required, to determine without notice and hearing, the commission shall order a public hearing on that matter and set a date, time, and place for the hearing. The date of hearing shall not be more than 90 days after the date of the order.

SEC. 96. Section 56665 is added to the Government Code, to read:

56665. The executive officer shall review each application which is filed with the executive officer and shall prepare a report, including his or her recommendations, on the application. The report shall be completed not less than five days prior to the date specified in the notice

of hearing. Upon completion, the executive officer shall furnish copies of the report to each of the following:

(a) The officers or persons designated in the application.

(b) Each local agency whose boundaries or sphere of influence would be changed by the proposal or recommendation.

(c) Each affected local agency which has filed a request for a report with the executive officer.

(d) The executive officer of another affected county when a district is or will be located in that other county.

(e) Each affected city.

SEC. 97. Section 56666 is added to the Government Code, to read:

56666. (a) The hearing shall be held by the commission upon the date and at the time and place specified. The hearing may be continued from time to time but not to exceed 70 days from the date specified in the original notice.

(b) At the hearing, the commission shall hear and receive any oral or written protests, objections, or evidence which shall be made, presented, or filed, and consider the report of the executive officer and the plan for providing services to the territory prepared pursuant to Section 56653.

SEC. 97.5. Section 56666 is added to the Government Code, to read:

56666. (a) The hearing shall be held by the commission upon the date and at the time and place specified. The hearing may be continued from time to time but not to exceed 70 days from the date specified in the original notice.

(b) At the hearing, the commission shall hear and receive any oral or written protests, objections, or evidence which shall be made, presented, or filed, and consider the report of the executive officer and the plan for providing services to the territory prepared pursuant to Section 56653.

(c) Prior to any continuance of a hearing pursuant to this section regarding a proposal that includes an incorporation, the chief petitioners shall have an opportunity to address the commission on any potential impacts or hardships on the incorporation effort that may result from a delay. The commission shall consider the potential impacts on the incorporation proponents prior to making a decision on the duration of any continuance.

SEC. 98. Section 56667 is added to the Government Code, to read:

56667. If the report filed pursuant to Section 56665 indicates that more than 50 percent of the land proposed for incorporation is owned by or dedicated to the use of a city or county and that the proposed incorporation would result in a revenue loss to that city or county, and at the hearing held pursuant to Section 56666 the board of supervisors of the county or city council of the city presents a resolution objecting to the incorporation, no further proceedings shall be conducted by the

commission and no new proposal involving incorporation of substantially the same territory shall be initiated for one year.

In the absence of a resolution of objection from a city or county, the commission may approve the proposal only if it imposes as a condition thereto that the newly incorporated city may not adopt any regulation or policy which would have a negative fiscal impact on any contract existing at the time of the incorporation which is related to the publicly owned land.

This section shall not preclude the completion of proceedings to incorporate territory which is the subject of incorporation proceedings filed with the executive officer of the commission prior to February 15, 1986.

SEC. 99. Section 56668 is added to the Government Code, to read:

56668. Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

(b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

''Services,'' as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

(c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

(g) Consistency with city or county general and specific plans.

(h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.

(i) The comments of any affected local agency.

(j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

(*l*) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.

(m) Any information or comments from the landowner or owners.

(n) Any information relating to existing land use designations.

SEC. 99.5. Section 56668.5 is added to the Government Code, to read:

56668.5. The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. This section does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.

SEC. 100. Section 56700.1 is added to the Government Code, to read:

56700.1. Expenditures for political purposes related to a change of organization or reorganization proposal that has been submitted to a commission, and contributions in support of or in opposition to those measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate.

SEC. 101. Section 56700.3 of the Government Code is repealed.

SEC. 102. Section 56700.4 is added to the Government Code, to read:

56700.4. (a) Before circulating any petition for change of organization, the proponent shall file with the executive officer a notice of intention that shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be signed by a representative of the proponent, and shall be in substantially the following form:

Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to ____.

The reasons for the proposal are:

(b) After the filing required pursuant to subdivision (a), the petition may be circulated for signatures.

(c) Upon receiving the notice, the executive officer shall notify any affected jurisdictions.

(d) The notice requirements of this section shall apply in addition to any other applicable notice requirements.

SEC. 103. Section 56700.5 of the Government Code is repealed.

SEC. 104. Section 56701 of the Government Code is repealed.

SEC. 105. Section 56702 of the Government Code is repealed.

SEC. 106. Section 56705 of the Government Code is amended to read:

56705. (a) Except as otherwise provided in subdivision (b), no petition shall be accepted for filing unless the signatures on the petition are secured within six months of the date on which the first signature on the petition was affixed and the petition is submitted to the executive officer for filing within 60 days after the last signature is affixed. If the elapsed time between the date on which the last signature is affixed and the date on which the petition is submitted for filing is more than 60 days, the executive officer shall file the petition in accordance with Section 56709.

(b) (1) Notwithstanding subdivision (a), in cities with a population of more than 100,000 residents that are located in a county with a population of over 4,000,000, no petition shall be accepted for filing unless the signatures thereon have been secured within 90 days of the publication of the notice required pursuant to Section 56760 and the petition is submitted to the executive officer for filing within 60 days after the last signature is affixed. If the elapsed time between the date on which the last signature is affixed and the date on which the petition is submitted for filing is more than 60 days, the executive officer shall file the petition in accordance with Section 56709.

(2) This subdivision shall not apply to a petition for a special reorganization, as defined in Section 56075.5. Subdivision (a) shall apply to a special reorganization, as defined in Section 56075.5, regardless of the number of residents in the city or county in which signatures have been secured on the petition. This paragraph is declaratory of existing law.

SEC. 107. Section 56706 of the Government Code is amended to read:

56706. (a) Within 30 days after the date of receiving a petition, the executive officer shall cause the petition to be examined by the county elections official, in accordance with Sections 9113 to 9115, inclusive, of the Elections Code and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(b) (1) Except as provided in paragraph (2), if the certificate of the executive officer shows the petition to be insufficient, the executive officer shall immediately give notice by certified mail of the insufficiency to the proponents, if any. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, a supplemental petition bearing additional signatures may be filed with the executive officer.

(2) Notwithstanding paragraph (1), the proponents of the petition may, at their option, collect signatures for an additional 15 days immediately following the statutory period allowed for collecting signatures without waiting for notice of insufficiency. Any proponent choosing to exercise this option may not file a supplemental petition as provided in paragraph (1).

(c) Within 10 days after the date of filing a supplemental petition, the executive officer shall examine the supplemental petition and certify in writing the results of his or her examination.

(d) A certificate of sufficiency shall be signed by the executive officer and dated. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the executive officer's examination. The executive officer shall mail a copy of the certificate of sufficiency to the proponents, if any.

SEC. 108. Section 56708 of the Government Code is amended to read:

56708. If a petition is signed by owners of land, the executive officer shall cause the names of the signers on the petition to be compared with the names of the persons shown as owners of land on the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application and ascertain, to the extent possible, both of the following:

(a) The total number of landowners within the territory and the total assessed valuation of all land within the affected territory.

(b) The total number of landowners represented by qualified signers and the total assessed valuation of land owned by qualified signers.

SEC. 109. Section 56710 of the Government Code is amended to read:

56710. For purposes of evaluating the sufficiency of any petition signed by owners of land:

(a) The assessed value to be given land exempt from taxation or owned by a public agency shall be determined by the county assessor, at the request of the executive officer, in the same amount as the county assessor would assess that land, if the land were not exempt from taxation or owned by a public agency.

(b) The value given land held in joint tenancy or tenancy in common shall be determined in proportion to the proportionate interest of the petitioner in that land.

(c) The executive officer shall disregard the signature of any person not shown as owner on the most recent assessment roll being prepared by the county at the time the commission adopts a resolution of application unless prior to certification the executive officer is furnished with written evidence, satisfactory to the executive officer, that the signer meets any of the following requirements:

(1) Is a legal representative of the owner.

(2) Is entitled to be shown as owner of land on the next assessment roll.

(3) Is a purchaser of land under a recorded written agreement of sale.

(4) Is authorized to sign for, and on behalf of, any public agency owning land.

SEC. 110. Chapter 3 (commencing with Section 56720) is added to Part 3 of Division 3 of Title 5 of the Government Code, to read:

CHAPTER 3. PROCEEDINGS FOR CITIES

Article 1. Incorporation

56720. The commission shall not approve or conditionally approve any proposal that includes an incorporation, unless the commission finds, based on the entire record, that:

(a) The proposed incorporation is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377.

(b) It has reviewed the spheres of influence of the affected local agencies and the incorporation is consistent with those spheres of influence.

(c) It has reviewed the comprehensive fiscal analysis prepared pursuant to Section 56800 and the Controller's report prepared pursuant to Section 56801.

(d) It has reviewed the executive officer's report and recommendation prepared pursuant to Section 56665, and the testimony presented at its public hearing.

(e) The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

56722. If a petition is for incorporation of a new city, or consolidation of cities, the petition may propose a name for the new or consolidated city.

The proposed name for the new or consolidated city may contain the word ''town.''

56723. If the petition is for incorporation, it may also include provisions for appointment of a city manager and appointment of elective city officials, except city council members.

56724. (a) If the commission approves a proposal that includes the incorporation of a city, the resolution making determinations shall, upon the incorporation applicant's request, specify that the first election of city officers is to be held after voter approval of the proposal.

(b) If the applicant has submitted an application to the commission prior to the effective date of this section, the applicant may request that the election of city officers be held after the vote on the incorporation proposal.

(c) If the election of city officers is to be conducted after the vote on the incorporation proposal, the commission shall not set the effective date to be sooner than the election date of the city officers.

Article 2. Special Reorganization

56730. Proceedings for a special reorganization shall be conducted in accordance with the procedures otherwise prescribed for incorporation of a city, including, but not limited to, the provisions specified in Sections 56720, 56800, 56810, and 56815. Notwithstanding any other provision of this division, an election, if required, shall be conducted in accordance with Sections 57119 and 57132.5.

Article 3. Annexation and Other Changes of Organization

56737. 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, the commission may 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.

56738. If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), then the petition shall state whether the city shall succeed to the contract pursuant to Section 51243 or whether the city intends to exercise its option to not succeed to the contract pursuant to Section 51243.5.

56740. (a) No tidelands or submerged lands, as defined in subdivision (g), which are owned by the state or by its grantees in trust shall be incorporated into, or annexed to, a city, except lands which may be approved by the State Lands Commission.

(b) If those tidelands or submerged lands are included within the boundaries of any territory proposed to be incorporated into, or annexed to, a city, a description of the boundaries, together with a map showing the boundaries, shall be filed with the State Lands Commission by the proponents of the incorporation or annexation. The filing with the State Lands Commission shall be made prior to the executive officer issuing a certificate of filing for the proposal.

(c) The State Lands Commission shall approve or disapprove all portions of the boundaries located upon the tidelands or submerged lands. In making that determination, it shall, where feasible and appropriate, require any extensions of land boundaries of the city or proposed city to be at right angles to the general direction of the shoreline at each point of intersection of the shoreline with the land boundaries of the city or proposed city. However, in the interest of ensuring an orderly and equitable pattern of offshore boundaries, the State Lands Commission may establish angles and other courses for each offshore boundary it deems necessary considering any irregularity of the shoreline, other geographical features, the effect of incorporation or annexation of the offshore or submerged lands on the uplands of the city, or proposed city, and adjoining territory, and the existing and potential boundaries of other cities and of unincorporated communities.

(d) Within 45 days after the filing of the boundary description and map with the State Lands Commission, the State Lands Commission shall make a determination of the proper offshore or submerged lands boundaries. That determination shall be final and conclusive. If the State Lands Commission does not make the determination within that time, the proposed offshore or submerged lands boundaries shall be deemed approved.

(e) The State Lands Commission shall report its determination to the executive officer and to each affected city, affected county, affected district, or person, if any, that has filed the boundary description and map. Thereafter, filings and action may be taken pursuant to this part.

(f) The local agency formation commission may review and make determinations as to all portions of the boundaries, other than those offshore or submerged lands boundaries.

(g) ''Submerged lands,'' as used in this section, includes, but is not limited to, lands underlying navigable waters which are in sovereign ownership of the state whether or not those waters are subject to tidal influences.

56741. Territory may not be annexed to a city unless it is located in the same county. Unless otherwise provided in this division, territory may not be annexed to a city unless it is contiguous to the city at the time the proposal is initiated pursuant to this part. Territory incorporated as a city shall be located within one county and, except as otherwise provided in Section 56742, shall be contiguous with all other territory being incorporated as a city.

56742. Notwithstanding Section 56741, upon approval of the commission a city may annex noncontiguous territory not exceeding 300 acres in area, which is located in the same county as that in which the city is situated, and which is owned by the city and is being used for municipal purposes at the time commission proceedings are initiated. If, after the completion of the annexation, the city sells that territory or any part of that territory, all of the territory which is no longer owned by the city shall cease to be a part of the city. Territory which is used by a city for reclamation, disposal, and storage of treated wastewater may be annexed to the city pursuant to this section without limitation as to the size of the area encompassed within the territory so annexed.

If territory is annexed pursuant to this section, the annexing city may not annex any territory not owned by the city and not contiguous to the city, although the territory is contiguous to the territory annexed pursuant to this section.

Notwithstanding any other provision of this section, a city which annexes territory pursuant to this section may annex additional territory in the same county as that in which the city is situated which is owned by the United States government or the State of California and which is contiguous to the first-annexed territory if the total acreage of the first-annexed and the subsequently annexed territory together does not exceed 300 acres in area. If after the completion of the subsequent annexation, the city sells all or any part of the first-annexed territory, the subsequently annexed territory shall cease to be part of the city if the subsequently annexed territory is no longer contiguous to territory owned by the city.

When territory ceases to be part of a city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment. The resolution shall describe the detached territory and shall be accompanied by a map indicating the territory. Immediately

upon adoption of the resolution, the city clerk shall make any filing required by Chapter 8 (commencing with Section 57200) of Part 4.

If territory annexed to a city pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

56742.5. (a) Notwithstanding Section 56741, upon approval of the commission any city may annex noncontiguous territory which constitutes a state correctional facility or a state correctional training facility. If, after the completion of the annexation, the State of California sells that territory or any part thereof, all of the territory which is no longer owned by the state shall cease to be a part of the city which annexed the territory.

(b) If territory is annexed pursuant to this section, the city may not annex any territory not owned by the State of California and not contiguous to the city although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of the city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory and shall be accompanied by a map indicating the territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4 of Division 3.

(d) If territory annexed pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) A city may enter into an agreement with any other city under which the city apportions any increase in state subventions resulting from the annexation of territory pursuant to this section.

56743. (a) Notwithstanding Section 56741, upon approval of the commission a city may annex noncontiguous territory not exceeding 3,100 acres in area, which is located in the same county as that in which the city is situated, and which is owned by the city and is being used for municipal water purposes at the time preliminary proceedings are initiated pursuant to this part. If, after the completion of the annexation, the city sells that territory or any part thereof, all of that territory which is no longer owned by the city shall cease to be a part of the city.

(b) If territory is annexed pursuant to this section, the annexing city may not annex any territory not owned by it and not contiguous to it although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of a city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory and shall be accompanied by a map indicating the

territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4.

(d) If territory annexed to a city pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) If territory is annexed pursuant to this section, it shall be used only for municipal water purposes. The city may, however, enter into agreements to lease the land for timber production or grazing by animals. If the territory is used by the city for any other purpose at any time, it shall cease to be a part of the city.

(f) This section applies only to the City of Willits.

56744. Unless otherwise determined by the commission pursuant to subdivision (*l*) of Section 56375, territory shall not be incorporated into, or annexed to, a city pursuant to this division if, as a result of that incorporation or annexation, unincorporated territory is completely surrounded by that city or by territory of that city on one or more sides and the Pacific Ocean on the remaining sides.

56745. If authorized pursuant to Section 56375.3, the commission may order annexation of the territory without an election.

56746. (a) The authority to initiate, conduct, and complete any proceeding pursuant to Section 56745 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 56745 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 56745. Upon final disposition of that case, the previously enjoined local agency may initiate, conduct, and complete proceedings pursuant to Section 56745 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 56745 after January 1, 2000, shall be initiated for two years after the date of adoption by the commission of a resolution terminating proceedings.

56747. (a) Notwithstanding Section 56031, unincorporated territory consisting of property abutting on a street, highway, or road, and the street, highway, or road, to the extent that it abuts that property,

together with the road strip may be annexed to a city pursuant to this division under the following conditions:

(1) The annexation may be made only if the property to be annexed is within the sphere of influence of the annexing city, as adopted by the commission, and lies within an unincorporated area wholly surrounded by the annexing city or the annexing city and the county line or the annexing city and the Pacific Ocean or the annexing city and a boundary of another city.

(2) The property to be annexed shall not be annexed if the distance between the boundary of the annexing city and the point closest to the annexing city at which the road strip connects with the abutting property, as measured by the road strip, is more than one-half mile.

(b) Subsequent annexations to the road strip and abutting territory shall not be made unless both of the following conditions are met:

(1) The distance between the point at which the original road strip abuts the boundary of the annexing city and the point closest to the city at which the road strip connects with the abutting property to be annexed, as measured by the road strip, is one-half mile or less.

(2) The annexation is contiguous to the road strip.

(c) As used in this section:

(1) ''Property to be annexed'' means the property abutting on a street, highway, or road, and the street, highway, or road, to the extent it abuts the property.

(2) ''Road strip'' means the street, highway, or road which connects the territory of the property to be annexed to the annexing city.

(d) This section applies only to the City of Cupertino.

56749. (a) The commission shall not approve or conditionally approve a change of organization or reorganization that would result in the annexation to a city of territory that is within a farmland security zone created pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Division 1. However, this subdivision shall not apply under any of the following circumstances:

(1) If the farmland security zone is located within a designated, delineated area that has been approved by the voters as a limit for existing and future urban facilities, utilities, and services.

(2) If annexation of a parcel or a portion of a parcel is necessary for the location of a public improvement, as defined in Section 51290.5, except as provided in subdivision (f) or (g) of Section 51296.

(3) If the landowner consents to the annexation.

(b) This section shall not apply during the three-year period preceding the termination of a farmland security zone contract under Article 7 (commencing with Section 51296) of Chapter 7 of Division 1.

56750. Notwithstanding Sections 56300 and 56301, the commission shall not disapprove a change of organization or

reorganization where the reason for disapproval is that the farmland security zone is excluded from the affected territory.

56751. (a) Upon receipt by the commission of a proposed change of organization or reorganization, except a special reorganization, that includes the detachment of territory from any city, the commission shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any city from which the detachment of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subsection (a), an affected city may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If an affected city has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the city.

56752. If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), then the resolution shall state whether the city shall succeed to the contract pursuant to Section 51243 or whether the city intends to exercise its option to not succeed to the contract pursuant to Section 51243.5.

56753. The executive officer shall give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing to the Director of Conservation if the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1).

56753.5. Within 10 days after receiving a proposal that would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), the executive officer shall notify the Director of Conservation of the proposal. The notice shall include the contract number, the date of the contract's execution, and a copy of any protest that the city had filed pursuant to Section 51243.5.

56754. If a change of organization or reorganization would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), the commission shall determine one of the following:

(a) That the city shall succeed to the rights, duties, and powers of the county pursuant to Section 51243, or

(b) That the city may exercise its option to not succeed to the rights, duties, and powers of the county pursuant to Section 51243.5.

56755. Prior to submitting a resolution of application for the annexation of territory described in Section 56375.3 to the commission, the legislative body adopting the resolution shall conduct a public hearing on the resolution. Notice of the hearing shall be published pursuant to Sections 56153 and 56154. At the hearing, any landowner shall be given an opportunity to present his or her views on the resolution.

56756. The clerk of the legislative body adopting a resolution of application shall file a certified copy of that resolution with the executive officer.

56757. (a) The commission shall not review a reorganization that includes an annexation to any city in Santa Clara County of unincorporated territory that is within the urban service area of the city if the reorganization is initiated by resolution of the legislative body of the city.

(b) The city council shall be the conducting authority for the reorganization and the proceedings for the reorganization shall be initiated and conducted as nearly as may be practicable in accordance with Part 4 (commencing with Section 57000).

(c) The city council, in adopting the resolution approving the reorganization, shall make all of the following findings:

(1) That the unincorporated territory is within the urban service area of the city as adopted by the commission.

(2) That the county surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with the road annexation policies of the commission. The city shall reimburse the county for the actual costs incurred by the county surveyor in making this determination.

(3) That the proposal does not split lines of assessment or ownership.

(4) That the proposal does not create islands or areas in which it would be difficult to provide municipal services.

(5) That the proposal is consistent with the adopted general plan of the city.

(6) That the territory is contiguous to existing city limits.

(7) That the city has complied with all conditions imposed by the commission for inclusion of the territory in the urban service area of the city.

(d) All reorganizations which involve territory for which the land use designation in the general plan of the city has changed from the time that the urban service area of the city was last adopted by the commission, and which are processed by a city pursuant to this section shall be subject to an appeal to the commission upon submission of a petition of appeal, signed by at least 50 registered voters in the county.

(e) An appeal to the commission may also be made by submission of a resolution of appeal adopted by the legislative body of a special district solely for the purpose of determining whether some or all of the territory contained in the reorganization proposal should also be annexed or detached from that special district.

(f) Any petition submitted under subdivision (d) or resolution submitted under subdivision (e) shall be submitted to the executive officer within 15 days of the adoption by the city council of the resolution approving the annexation. The executive officer shall schedule the hearing for the next regular meeting of the commission as is practicable. The commission may set a reasonable appeal fee.

56758. If the proposal includes the annexation of inhabited territory to a city with over 100,000 residents which is located in a county with a population of over 4,000,000, no proceedings shall be initiated either by petition or by application of a legislative body unless the proposal is consistent with the sphere of influence of any affected city or affected district.

56759. In any order approving a proposal for an annexation or a reorganization that includes annexation of inhabited territory to a city when the assessed value of land within that territory proposed to be annexed equals one-half, or more, of that within the city, as shown by the last equalized assessment rolls, or the number of registered voters of the territory equals one-half, or more, of the number of registered voters within the city, as shown by the county register of voters, the commission shall require that an election called upon the question of confirming the annexation or reorganization shall also be called, held, and conducted within the territory of the city to which territory is proposed to be annexed.

Article 4. Initiation by Petition

56760. (a) Before circulating any petition for change of organization for a city with a population of more than 100,000 which is located in a county with a population of over 4,000,000, the proponents shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be published pursuant to Section 56153. The notice shall be signed by at least one, but not more than three, chief petitioners and shall be in substantially the following form:

Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to ____ territory to the City of ____.

The reasons for the proposal are:

(b) Within five days after the date of publication, the chief petitioners shall file with the clerk of the city and the executive officer a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication.

(c) After the filing required pursuant to subdivision (b), the petition may be circulated for signatures.

56764. A petition for the incorporation of a city shall be signed by either of the following:

(a) Not less than 25 percent of the registered voters residing in the area to be incorporated, as determined by the commission pursuant to subdivision (f) of Section 56375.

(b) Not less than 25 percent of the number of owners of land within the territory proposed to be incorporated who also own not less than 25 percent of the assessed value of land within the territory proposed to be incorporated, as shown on the last equalized assessment roll of the county.

56765. A petition for the disincorporation of a city shall be signed by not less than 25 percent of the registered voters residing in the city proposed to be disincorporated as shown on the county register of voters.

56766. A petition for the consolidation of two or more cities shall be signed by not less than 5 percent of the registered voters of each affected city as shown on the county register of voters.

56767. (a) Except as otherwise provided in subdivision (b), a petition for annexation of territory to a city shall be signed by either of the following:

(1) Not less than 5 percent of the number of registered voters residing within the territory proposed to be annexed as shown on the county register of voters.

(2) Not less than 5 percent of the number of owners of land within the territory proposed to be annexed who also own 5 percent of the assessed value of land within the territory as shown on the last equalized assessment roll.

(b) Notwithstanding subdivision (a), a petition for the annexation of territory to a city with more than 100,000 residents which is located in a county with a population of over 4,000,000, shall be signed by either of the following:

(1) Not less than 5 percent of the number of registered voters residing within the territory proposed to be annexed as shown on the county register of voters.

(2) Not less than 5 percent of the number of owners of land within the territory proposed to be annexed who also own 5 percent of the assessed

value of land within the territory as shown on the last equalized assessment roll.

56768. A petition for detachment of territory from a city shall be signed by either of the following:

(a) Not less than 25 percent of the registered voters residing within the territory proposed to be detached, as shown on the county register of voters.

(b) Not less than 25 percent of the number of owners of land within the territory proposed to be detached who also own 25 percent of the assessed value of land within the territory, as shown on the last equalized assessment roll.

SEC. 111. Chapter 3 (commencing with Section 56750) of Part 3 of Division 3 of Title 5 of the Government Code is repealed.

SEC. 112. The heading of Chapter 4 (commencing with Section 56800) of Part 3 of Division 3 of Title 5 of the Government Code is amended to read:

CHAPTER 4. FISCAL PROVISIONS

SEC. 113. A heading is added as Article 1 (commencing with Section 56800) to Chapter 4 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 1. Comprehensive Fiscal Analysis

SEC. 114. Section 56800 of the Government Code is amended and renumbered to read:

56654. (a) A proposal for a change of organization or a reorganization may be made by the adoption of a resolution of application by the legislative body of an affected local agency.

(b) At least 20 days before the adoption of the resolution, the legislative body may give mailed notice of its intention to adopt a resolution of application to the commission and to each interested agency and each subject agency. The notice shall generally describe the proposal and the affected territory.

(c) Except for the provisions regarding signers and signatures, a resolution of application shall contain all of the matters specified for a petition in Section 56700 and shall be submitted with a plan for services prepared pursuant to Section 56653.

SEC. 115. Section 56800 is added to the Government Code, to read:

56800. For any proposal which includes an incorporation, the executive officer shall prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. This analysis shall become part of the report required pursuant to Section 56665. Data used for the analysis

shall be from the most recent fiscal year for which data are available, provided that the data are not more than one fiscal year old. When data from the most recent fiscal year are unavailable, the executive officer may request supplemental data. The analysis shall review and document each of the following:

(a) The costs to the proposed city of providing public services and facilities during the three fiscal years following incorporation.

(b) The revenues of the proposed city during the three fiscal years following incorporation.

(c) The effects on the costs and revenues of any affected local agency during the three fiscal years of incorporation.

(d) Any other information and analysis needed to make the findings required by Section 56720.

SEC. 115.5. Section 56800 is added to the Government Code, to read:

56800. For any proposal which includes an incorporation, the executive officer shall prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. This analysis shall become part of the report required pursuant to Section 56665. Data used for the analysis shall be from the most recent fiscal year for which data are available preceding the issuance of the certificate of filing. When data from the most recent fiscal year are unavailable, the analysis shall document the source and methodology of the data used. The analysis shall review and document each of the following:

(a) The costs to the proposed city of providing public services and facilities during the three fiscal years following incorporation with the following criteria:

(1) When determining costs, the executive officer shall include all direct and indirect costs associated with the current provision of existing services in the affected territory. These costs should reflect the actual or estimated costs at which the existing level of service could be contracted by the proposed city following an incorporation, if the city elects to do so, and shall include any general fund expenditures used to support or subsidize a fee-supported service where the full costs of providing the service are not fully recovered through fees. The executive officer shall also identify which of these costs shall be transferred to the new city that result in an administrative cost reduction to other agencies. In the analysis, the executive officer shall also review how the costs of any existing services compare to the costs of services provided in cities with similar populations and similar geographic size that provide a similar level and range of services and shall make a reasonable determination of the costs expected to be borne by the newly incorporated city.

(2) When determining costs, the executive officer shall also include all direct and indirect costs, of any public services that are proposed to

be assumed by the new city and that are provided by state agencies in the area proposed to be incorporated.

(b) The revenues of the proposed city during the three fiscal years following incorporation.

(c) The effects on the costs and revenues of any affected local agency during the three fiscal years of incorporation.

(d) Any other information and analysis needed to make the findings required by Section 56720.

SEC. 116. Section 56800.3 of the Government Code is repealed.

SEC. 117. Section 56801 of the Government Code is repealed.

SEC. 118. Section 56801 is added to the Government Code, to read:

56801. (a) For any proposal that includes an incorporation, the executive officer shall, at the request of an interested party, which request is submitted pursuant to subdivision (b), and prior to issuing his or her report and recommendation pursuant to Section 56665, request the Controller to review the comprehensive fiscal analysis prepared pursuant to Section 56800. The request by an interested party shall specify in writing any element of the comprehensive fiscal analysis that the Controller is requested to review and the reasons the Controller is requested to review each element.

(b) The commission may adopt written procedures for the acceptance, referral, and payment for a request for the Controller's review, which shall include setting a time period during which an interested party is permitted to submit a request pursuant to subdivision (a). The time period for accepting a request shall not be less than 30 days following notice given in the same manner as specified in Section 56153.

(c) Within 45 days of receiving the analysis, the Controller shall issue a report to the executive officer regarding the accuracy and reliability of the information, methodologies, and documentation used in the analysis. The times within which the executive officer or commission is required to act pursuant to this chapter shall be tolled for the time required by the Controller for completion of the report. The executive officer shall include the results of the Controller's report into his or her own report and recommendation issued pursuant to Section 56665.

(d) Notwithstanding Sections 56378 and 56386, the Controller may charge the commission for the actual costs incurred pursuant to this section. The commission may recover these costs by charging the person who requested the Controller's review.

SEC. 119. Section 56802 of the Government Code is repealed.

SEC. 120. Section 56802 is added to the Government Code, to read:

56802. (a) For any proposal for incorporation of the territory within the Mountain House Community Services District, San Joaquin County shall provide the required funds to those petitioners filing the incorporation application for all costs involved in filing the application

for incorporation pursuant to this division, including the preparation of the comprehensive fiscal analysis pursuant to Section 56800.

(b) The funds provided by the county pursuant to this section shall not be construed to be a gift of public funds and may only be granted to a quasi-public or nonprofit organization formed for the purpose of pursuing incorporation of the Mountain House area.

(c) San Joaquin County shall provide the funds required in subdivision (a) only one time, upon the first filing of application for incorporation.

SEC. 121. Section 56803 is added to the Government Code, to read:

56803. If the commission approves a proposal which includes the incorporation of a city, the resolution making determinations shall accept or reject each of the findings and recommendations made in the executive officer's report prepared pursuant to Section 56665, and the fiscal analysis prepared pursuant to Section 56800. If the commission rejects a finding or recommendation, the resolution making determinations shall include findings by the commission which present the basis for any rejection.

SEC. 122. Article 2 (commencing with Section 56810) is added to Chapter 4 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 2. Property Tax Exchange

56810. (a) (1) If the proposal includes the incorporation of a city, as defined in Section 56043, the commission shall determine the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section and Section 56815.

(2) If the proposal includes the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the amount of property tax to be exchanged by the affected local agency pursuant to this section.

(b) The commission shall notify the county auditor of the proposal and the services which the new jurisdiction proposes to assume within the area, and identify for the auditor the existing service providers within the area subject to the proposal.

(c) If the proposal would not transfer all of an affected agency's service responsibilities to the proposed city or district, the commission and the county auditor shall do all of the following:

(1) The county auditor shall determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by each affected local agency in the prior fiscal year.

For purposes of making this determination and the determination required by paragraph (3), ''total amount of revenue from all sources available for general purposes'' means the total amount of revenue which an affected local agency may use on a discretionary basis for any purpose and does not include any of the following:

(A) Revenue which, by statute, is required to be used for a specific purpose.

(B) Revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services.

(C) Revenue received from the federal government which is required to be used for a specific purpose.

(2) The commission shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal. For purposes of this paragraph, ''total net cost'' means the total direct and indirect costs which were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost which was funded by any revenues of that agency which are specified in subparagraphs (A), (B), and (C) of paragraph (1).

(3) The commission shall multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount described in the previous sentence by the annual tax increment according to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the new city or district receives its initial allocation of property taxes.

(4) For purposes of this subdivision, in any county in which, prior to the adoption of Article XIII A of the California Constitution, and continuing thereafter, a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or funds services rendered in the unincorporated area have been paid, the amount of property tax revenues derived pursuant to paragraph (3), may, at the discretion of the commission, be transferred to the proposed city over a period not to exceed 12 fiscal years following its incorporation. In determining whether the transfer of the amount of property tax revenues determined pursuant to paragraph (3) shall occur entirely within the fiscal year immediately following the incorporation of the proposed city or shall be

phased in over a period not to exceed 12 full fiscal years following the incorporation, the commission shall consider each of the following:

(A) The total amount of revenue from all sources available to the proposed city.

(B) The fiscal impact of the proposed transfer on the transferring agency.

(C) Any other relevant facts which interested parties to the exchange may present to the commission in written form.

The decision of the commission shall be supported by written findings setting forth the basis for its decision.

(d) If the proposal would transfer all of an affected agency's service responsibilities to the proposed city or district, the commission shall request the auditor to determine the property tax revenue generated for the affected service providers by tax rate area, or portion thereof, and transmit that information to the commission.

(e) The executive officer shall notify the auditor of the amount determined pursuant to paragraph (3) of subdivision (c) or subdivision (d), as the case may be, and, where applicable, the period of time within which and the procedure by which the transfer of property tax revenues will be effected pursuant to paragraph (4) of subdivision (c), at the time the executive officer records a certificate of completion pursuant to Section 57203 for any proposal described in subdivision (a), and the auditor shall transfer that amount to the new jurisdiction.

(f) The amendments to this section enacted during the 1985–86 Regular Session of the Legislature shall apply to any proposal described in subdivision (a) for which a certificate of completion is recorded with the county recorder on or after January 1, 1987.

(g) For purposes of this section, ''prior fiscal year'' means the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform the calculations required by this section are available preceding the fiscal year in which the commission approves by resolution the city's proposal to incorporate or the district's proposal to form.

(h) An action brought by a city or district to contest any determinations of the county auditor or the commission with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section shall be commenced within three years of the effective date of the city's incorporation or the district's formation. These actions may be brought by any city that incorporated or by any district that formed on or after January 1, 1986.

(i) This section applies to any city that incorporated or district that formed on or after January 1, 1986.

(j) The calculations and procedures specified in this section shall be made prior to and shall be incorporated into the calculations specified in Section 56815.

56811. If a proposal includes the formation of a district, the commission shall determine the appropriations limit of the district in accordance with Section 7902.7 and Article XIII B of the California Constitution.

56812. (a) If a proposal includes the incorporation of a city, the commission shall determine the provisional appropriations limit of the city in accordance with Section 7902.7 and Article XIII B of the California Constitution. The commission shall determine the provisional appropriations limit of the city in the following manner:

(1) Estimate the amount of revenue anticipated to be received by the city from the proceeds of taxes for the first full fiscal year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full fiscal year of operation and such other changes as may be required or permitted by Article XIII B of the California Constitution.

(b) The governing body of the city shall determine the proposed permanent appropriations limit of the city to be submitted to the voters in the following manner:

(1) Determine the amount of revenue actually received by the city from the proceeds of taxes for the first full fiscal year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full fiscal year of operation and such other changes as may be required or permitted by Article XIII B of the California Constitution.

(c) The permanent appropriations limit of the city shall be set at the first municipal election which is held following the first full fiscal year of operation and shall not be considered to be a change in the appropriations limit of the city pursuant to Section 4 of Article XIII B of the California Constitution.

SEC. 123. Article 3 (commencing with Section 56815) is added to Chapter 4 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 3. Revenue Neutrality

56815. (a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory which, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures currently made by the local agency transferring the affected territory for those services which will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.

SEC. 123.5. Section 56815 is added to the Government Code, to read:

56815. (a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.

SEC. 123.7. Section 56815 is added to the Government Code, to read:

56815. (a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise

provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.

(f) For any incorporation approved by the voters on or after January 1, 2001, voter approval of terms and conditions, including, but not limited to, fiscal mitigation measures, which terms and conditions were found by the commission to constitute an agreement by the proponents of incorporation and the affected agency, shall constitute a binding contractual obligation of the affected new city and each party to the agreement to comply with those terms and conditions.

SEC. 124. Section 56815.2 is added to the Government Code, to read:

56815.2. By July 1, 2001, the Governor's Office of Planning and Research, in consultation with the Controller, shall convene a task force composed of representatives of cities, counties, special districts, and local agency formation commissions, as nominated by their statewide organizations and associations, with expertise in local government fiscal issues for the purpose of creating statewide guidelines for the incorporation process. The guidelines shall be completed by January 1, 2002, by the Office of Planning and Research and shall serve as minimum statewide guidelines for the incorporation process. The guidelines shall include, but not be limited to, information to assist incorporation proponents to understand the incorporation process, its timelines, and likely costs. They shall also provide direction to affected agencies regarding the type of information that should be included in the comprehensive fiscal analysis of an incorporation, as well as suggestions for alternative ways to achieve fiscally neutral incorporations. The guidelines shall be advisory to the commissions in the review of incorporation proposals.

SEC. 125. A heading is added as Chapter 5 (commencing with Section 56820) to Part 3 of Division 3 of Title 5 of the Government Code, to read:

CHAPTER 5. PROCEEDINGS FOR SPECIAL DISTRICTS

SEC. 126. Article 1 (commencing with Section 56820) is added to Chapter 5 of Part 3 of Division 3 of the Government Code, to read:

Article 1. Representation and Functions

56820. The commission may take proceedings pursuant to this chapter for the adoption, amendment, or repeal of regulations affecting the functions and services of special districts within the county. Those proceedings may be initiated either by the commission or by independent special districts within the county. If the commission has representation from special districts prior to January 1, 2001, and if the commission has previously adopted regulations limiting the exercise of powers by its special districts as a condition of that representation, those regulations shall be repealed upon the request of a majority of independent special districts within the county.

56820.5. The commission may adopt, amend, or repeal regulations affecting the functions and services of special districts within the county. The regulations shall designate the special districts, by type and by principal act, to which they apply and the regulations shall not apply to, or affect the functions and services of, any special districts not so designated. The regulations may do any of the following:

(a) Classify the various types of service which customarily are, or can be, provided within a single function of a special district. A class may be based upon the type of service, the purpose or use of the service, the facilities used to provide the service, the type of consumers or users of the service, the extent of territory provided with the service, and any other factors which, in the opinion of the commission, are necessary or convenient to group persons, properties, or activities into a class having common characteristics distinct from those of other classes.

(b) Require existing districts to file written statements with the commission specifying the functions or classes of service provided by those districts.

(c) Establish the nature, location, and extent of any functions or classes of service provided by existing districts.

(d) Determine that, except as otherwise authorized by the regulations, no new or different function or class of service shall be provided by any existing district.

The regulations shall not apply to the extension or enlargement, within the boundaries of an existing special district, of any function or service which the commission, pursuant to this section, has established is currently being provided by that special district.

56820.7. In any county where regulations have been adopted, an application for the formation of a special district shall set forth the functions and services proposed to be provided by the district. If, in the opinion of the commission, approval of the application will necessitate adoption of any new regulations or the amendment or repeal of any existing regulations, the commission may condition approval of the

application upon the adoption, amendment, or repeal of the regulations and shall initiate and conduct proceedings pursuant to this chapter for the adoption, amendment, or repeal of those regulations.

56821. Either the commission or the legislative body of any independent special district within a county may adopt a resolution initiating proceedings as follows:

(a) It may propose representation of special districts upon the commission.

(b) It may propose the adoption, amendment, or repeal of regulations affecting the functions and services of special districts, in which case it shall request that the commission do either of the following:

(1) Consider the proposal without reference to a special district advisory committee, in which case the resolution shall contain the text of the regulations proposed to be adopted, amended, or repealed.

(2) Refer the proposal to a special district advisory committee for study, report, and recommendation, in which case the resolution shall generally describe the nature of the regulations proposed to be amended, adopted, or repealed and, if then available, shall refer to a text on file with the clerk of the district for a detailed description of the regulations.

56821.1. If the commission adopts a resolution pursuant to subdivision (a) of Section 56821, the executive officer shall immediately call a meeting of the independent special district selection committee referred to in Section 56332. The meeting shall be held not less than 15, or more than 35, days from the adoption of the resolution by the commission. The independent special district selection committee shall meet at the time and place designated by the executive officer and shall consider the resolution adopted by the commission. By majority vote of those district representatives voting on the issue, the selection committee shall either approve or disapprove the resolution adopted by the commission. If the selection committee approves the resolution adopted by the commission, it shall immediately inform the executive officer of that action, and the commission at its next meeting shall adopt a resolution of intention pursuant to Section 56822. If the selection committee disapproves the resolution adopted by the commission, it shall immediately inform the executive officer of this action and all further proceedings under this chapter shall cease.

56821.3. If an independent special district adopts a resolution pursuant to subdivision (a) of Section 56821, it shall immediately forward a copy of the resolution to the executive officer. Upon receipt of those resolutions from a majority of independent special districts within a county, adopted by the districts within one year from the date that the first resolution was adopted, the commission, at its next regular meeting, shall adopt a resolution of intention pursuant to Section 56822.

56821.5. A certified copy of any resolution which has been adopted by an independent special district pursuant to subdivision (b) of Section 56821 and a copy of the text, if any, of proposed regulations referred to in the resolution shall be filed with the executive officer. If a resolution, or substantially identical resolution, has been filed by a majority of independent special districts within the county, then, not later than 35 days after the filing, the commission shall adopt a resolution of intention in accordance with the filed resolution or resolutions.

56821.7. Minor changes in any existing regulation affecting special districts may be ordered by the commission, without adoption of a resolution of intention, notice, and hearing, or reference to a special district advisory committee, if the commission makes a determination that those changes will not substantially affect the functions and services of any special district subject to those regulations and that determination is concurred in by both of the commission members appointed to represent the special districts.

56822. Whenever the commission, or the independent special districts, as the case may be, have complied with the applicable provisions of Sections 56821, 56821.1, 56821.3, and 56821.5, the commission shall adopt a resolution of intention pursuant to this section. The resolution of intention shall do all of the following:

(a) State whether the proceedings are initiated by the commission or by an independent special district or districts, in which case, the names of those districts shall be set forth.

(b) If the resolution of intention proposes only the adoption, amendment, or repeal of regulations affecting the functions and services of special districts, it shall state that the commission proposes either of the following:

(1) To consider the proposal without reference to a special district advisory committee, in which case the resolution shall contain the text of the regulations proposed to be adopted, amended, or repealed.

(2) To refer the proposal to a special district advisory committee for study, report, and recommendation, in which case the resolution shall generally describe the nature of the regulations proposed to be amended, adopted, or repealed and, if then available, shall refer to a text on file with the executive officer for a detailed description of the regulations.

In addition, the resolution of intention adopted pursuant to this subdivision shall also fix a time, not less than 15 or more than 35 days after the adoption of the resolution of intention, and the place of hearing by the commission on the question of whether the proposal made by the resolution should be disapproved, approved, and ordered without reference to a special district advisory committee, or referred to a special district advisory committee for study, report, and recommendation to the commission.

(c) If the resolution of intention proposes representation of special districts on the commission, it shall state that the commission proposes to refer the proposal to a special district advisory committee and the commission shall immediately order the proposal referred to that committee pursuant to Section 56823.

56822.3. If a hearing is called pursuant to subdivision (b) of Section 56822, the executive officer shall give notice of the hearing by publication, as provided in Sections 56153 and 56154, by posting, as provided in Sections 56158 and 56159, and by mailing to the clerk of the county and each local agency within the county, as provided in Sections 56155, 56156, and 56157.

56822.5. The hearing referred to in Section 56822.3 shall be held by the commission at the time and place specified or to which the hearing may be continued. After the conclusion of the hearing, the commission shall adopt a resolution disapproving the proposal made by the resolution of intention, approving and ordering the proposal without reference to a special district advisory committee, or ordering the proposal referred to a special district advisory committee for study, report, and recommendation.

56823. If the commission orders a proposal referred to a special district advisory committee for study, report, and recommendation, the appointment of, and proceedings by, the advisory committee shall be made and taken substantially in accordance with the provisions of Chapter 6 (commencing with Section 56826), pertaining to reorganization committees, except that the advisory committee shall not be terminated until after the commission acts upon the report and recommendation of the advisory committee. When applied to proceedings taken pursuant to this chapter:

(a) ''Plan of reorganization'' means a plan containing the text of regulations affecting the functions and services of special districts.

(b) ''Proposal of reorganization,'' ''reorganization,'' or ''change of organization'' means a proposal made pursuant to this chapter.

(c) ''Reorganization committee'' means the special district advisory committee.

(d) ''Subject district'' means an independent special district affected by a proposal made pursuant to this chapter.

If the commission is of the opinion that special districts, other than independent special districts, may be affected by the proposal, then, in addition to the appointment of voting members to the advisory committee to represent independent special districts, the commission may authorize the legislative bodies of special districts, other than independent special districts, to appoint nonvoting members to the advisory committee. Any nonvoting member shall have all of the rights of a voting member except the right to vote.

56824. Where a special district advisory committee consists of voting members representing more than five independent special districts, the advisory committee may appoint an executive committee to undertake all or part of the study and may authorize the executive committee to prepare a tentative report and recommendation for submission to and approval by the full advisory committee. The executive committee shall consist of the number of voting members as the advisory committee may determine. If the commission authorizes the appointment of nonvoting members to the advisory committee, those nonvoting members may appoint members to the executive committee in numbers not exceeding those appointed by the voting members and any nonvoting member appointed to the executive committee shall have all of the rights of a voting member on the committee, except the right to vote.

Upon completion of the studies of the executive committee, the executive committee shall report to the full advisory committee and submit any tentative report and recommendation prepared by the executive committee. Thereafter, the advisory committee may reject any tentative report and recommendation submitted, may adopt any tentative report and recommendation submitted, either as submitted by the executive committee or as changed by the full advisory committee, or the advisory committee may prepare its own report and recommendation.

56824.1. Not later than 35 days after the filing with the executive officer of the report and recommendation of a special district advisory committee, the commission shall take one of the following actions:

(a) If the report concerns only the adoption, amendment, or repeal of regulations affecting the functions and services of special districts, the commission may do either of the following:

(1) Disapprove the report without further notice and hearing.

(2) Adopt a resolution of intention to hold a hearing on the report pursuant to subdivision (c).

(b) If the report concerns a request for special district representation on the commission, the commission shall adopt a resolution declaring its intention to approve the report and recommendation.

(c) A resolution of intention shall do all of the following:

(1) Refer to the report and recommendation of the special district advisory committee, generally describe the nature and contents of the report and recommendation, and refer to the report and recommendation on file with the executive officer for a detailed description report and recommendation.

(2) Declare the intention of the commission to approve the recommendation and report, as filed or as those regulations may be changed by the commission after notice and hearing.

(3) Fix a time, not less than 15 days, or more than 35 days, after the adoption of the resolution of intention, and the place of hearing by the commission, on the question of whether the report and recommendation filed by the special district advisory committee should be approved, either as filed or as ordered changed by the commission after notice and hearing.

56824.3. The executive officer shall give notice of the hearing by publication, as provided in Sections 56153 and 56154, by posting, as provided in Sections 56158 and 56159, and by mailing to the clerk of the county and each local agency within the county, as provided in Sections 56155, 56156, and 56157.

56824.5. The hearing shall be held by the commission at the time and place specified or to which the hearing may be continued. During the course of the hearing, the commission may propose changes in the report and recommendations. Any proposed changes shall be referred, for review, to the special district advisory committee, or if the advisory committee has appointed an executive committee, to that executive committee. The advisory committee, or the executive committee, shall have 60 days to report back to the commission. If no report is received by the commission within 60 days, the advisory committee shall be deemed to have approved the proposed changes in the report and recommendation.

Within 30 days after the conclusion of the hearing, the commission shall adopt a resolution approving the report and recommendation, either as filed or as those regulations may be changed by the commission.

56824.7. Any resolution approving the report and recommendation of a special district advisory committee, either as filed or as changed by the commission, shall order both of the following:

(a) The adoption, amendment, or repeal of regulations, in accordance with the recommendations of the approved report.

(b) The chairperson of the commission to call and give notice of a meeting of the independent special district selection committee to be held within 15 days after the adoption of the resolution if special district representatives on the commission are to be selected pursuant to Section 56332.

SEC. 127. The heading of Chapter 5 (commencing with Section 56825) of Part 3 of Division 3 of Title 5 of the Government Code is repealed.

SEC. 128. A heading is added as Article 2 (commencing with Section 56825) to Chapter 5 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 2. Reorganization

SEC. 129. Section 56826 of the Government Code is repealed.

SEC. 130. Section 56826 is added to the Government Code, to read:

56826. A reorganization or a plan of reorganization shall provide for one or more changes of organization of any type for each of the subject districts and may provide for the formation of one or more new districts pursuant to the principal act or acts designated in the reorganization or plan of reorganization and Section 56100.

SEC. 131. Section 56827 of the Government Code is repealed.

SEC. 132. Section 56827 is added to the Government Code, to read:

56827. (a) Except as provided in subdivision (b), upon the presentation of any petition or applications making a proposal for a reorganization, the commission may take proceedings pursuant to Part 3 (commencing with Section 56650) without referring the proposal to a reorganization committee, as provided in this part.

(b) The commission may refer to a reorganization committee any incorporation proposal that includes, or may be modified to include, any of the following changes of organization affecting an independent special district: consolidation, dissolution, formation, merger, or establishment of a subsidiary district.

SEC. 133. Section 56827.5 of the Government Code is repealed.

SEC. 134. Section 56828 of the Government Code is repealed.

SEC. 135. Section 56828 is added to the Government Code, to read:

56828. Before any proposal for reorganization is referred to any reorganization committee, the commission may provide for a public hearing on the question of whether the proposal should be disapproved or referred to a reorganization committee and set a time and place for that hearing.

SEC. 136. Section 56828.5 of the Government Code is repealed.

SEC. 137. Section 56829 of the Government Code is repealed.

SEC. 138. Section 56829 is added to the Government Code, to read:

56829. The executive officer shall give notice of that hearing by publication, as provided in Sections 56153 and 56154, and by posting, as provided in Sections 56158 and 56159.

SEC. 139. Section 56830 of the Government Code is repealed.

SEC. 140. Section 56830 is added to the Government Code, to read:

56830. The executive officer shall also give mailed notice of any hearing, as provided in Sections 56155 to 56157, inclusive, by mailing notice of hearing to all of the following persons and entities:

(a) Each affected city and affected district.

(b) The chief petitioners, if any.

(c) Each person who has filed a written request for special notice with the executive officer.

SEC. 141. Section 56831 of the Government Code is repealed.

SEC. 142. Section 56831 is added to the Government Code, to read:

56831. The hearing shall be held by the commission on the date and at the time and place specified in the notice. After the conclusion of the hearing, the commission shall adopt a resolution doing either of the following:

(a) Disapproving the proposal of reorganization.

(b) Ordering the proposal referred to a reorganization committee for study, report, and recommendation.

SEC. 143. Section 56832 of the Government Code is repealed.

SEC. 144. Section 56832 is added to the Government Code, to read:

56832. The commission may accept contributions from any source for the purpose of paying the expenses of a reorganization committee in the conduct of its study, report, and recommendation. Any affected county, affected city, or affected district may make contributions for that purpose. The commission and any affected county, affected city, or affected district may make any of its facilities available for the use of a reorganization committee and may authorize any of its officers and employees to furnish advice, assistance, or services to the committee.

SEC. 145. Section 56833 of the Government Code is repealed.

SEC. 146. Section 56833 is added to the Government Code, to read:

56833. Any resolution adopted by the commission ordering a proposal of reorganization referred to a reorganization committee shall do all of the following:

(a) Describe the proposed reorganization and designate the subject districts (the description and designation may be by reference to the proposal).

(b) Specify the maximum number of members, not to exceed three, to represent each subject district on the committee.

(c) Fix a time and place for the first meeting of the reorganization committee.

(d) Designate a date, not less than 60 days from the date of the first meeting of the committee, for the completion and submission to the commission of the report and recommendation of the committee.

SEC. 147. Section 56833.1 of the Government Code is repealed.

SEC. 148. Section 56833.3 of the Government Code is repealed.

SEC. 149. Section 56833.5 of the Government Code is repealed.

SEC. 150. Section 56834 of the Government Code is repealed.

SEC. 151. Section 56834 is added to the Government Code, to read:

56834. From time to time during the course of study upon a proposed plan of reorganization, the commission may do any of the following:

(a) Extend the time for completion and submission of the report and recommendation of a reorganization committee.

(b) Change the scope of the study by the addition or deletion of territory or of subject districts.

(c) Authorize the committee to develop, study, report, and make recommendations upon alternative plans of reorganization.

SEC. 152. Section 56835 of the Government Code is repealed.

SEC. 153. Section 56835 is added to the Government Code, to read:

56835. At least 15 days before the date of the first meeting of a reorganization committee, the executive officer shall mail a copy of the resolution adopted by the commission to each subject district designated in the resolution.

SEC. 154. Section 56836 of the Government Code is repealed.

SEC. 155. Section 56836 is added to the Government Code, to read:

56836. Any person, including, but not limited to, a member of the legislative body of a subject district and an officer or employee of the district, may be appointed as a member to represent the district upon a reorganization committee.

SEC. 156. Section 56837 of the Government Code is repealed.

SEC. 157. Section 56837 is added to the Government Code, to read:

56837. (a) The legislative body of each affected district shall appoint one or more members, not to exceed the maximum number specified by the commission, to represent the district on the reorganization committee. That legislative body may remove and replace any member previously appointed by it, and may fill any vacancy in its membership upon the committee.

(b) In the case of a reorganization committee created pursuant to subdivision (b) of Section 56827, the county board of supervisors shall appoint one or more members, not to exceed the maximum number specified by the commission, to represent the county on the reorganization committee. The county board of supervisors may appoint any person, including, but not limited to, an officer or employee of the county to represent the county on the reorganization committee. The county board of supervisors may remove and replace any member previously appointed by it, and may fill any vacancy in its membership on the committee.

(c) In the case of a reorganization committee created pursuant to subdivision (b) of Section 56827, the commission shall appoint one or more members to represent the general public on the reorganization committee. The number of members appointed to represent the general public shall not exceed the maximum number specified by the commission to represent the county or each subject district. A member appointed pursuant to this subdivision shall not be an officer or employee of any local agency. The commission may remove and replace any member previously appointed by it, and may fill any vacancy in its membership on the committee.

SEC. 158. Section 56838 of the Government Code is repealed.

SEC. 159. Section 56838 is added to the Government Code, to read:

56838. The clerk of a subject district shall give immediate notice to the executive officer of all appointments and removals made by the legislative body to a reorganization committee.

SEC. 160. Section 56839 of the Government Code is repealed.

SEC. 161. Section 56839 is added to the Government Code, to read:

56839. At any time after the date fixed for the first meeting of a reorganization committee or during the course of the study by the committee, if the legislative body of any subject district, after written request by the executive officer, does not appoint any members to the committee, those members may be appointed by the commission.

SEC. 162. Section 56839.1 of the Government Code is repealed.

SEC. 163. Section 56840 of the Government Code is repealed.

SEC. 164. Section 56840 is added to the Government Code, to read:

56840. If, during the course of study upon a proposed plan of reorganization, the commission authorizes a change in the scope of the study, the membership of the reorganization committee shall be immediately changed to exclude representatives of each district or city for which a change of organization is no longer proposed and to include representatives of each district or city for which a new change of organization is proposed.

SEC. 165. Section 56840.5 of the Government Code is repealed.

SEC. 166. Section 56841 of the Government Code is repealed.

SEC. 167. Section 56841 is added to the Government Code, to read:

56841. Subject to any standards and procedures adopted by regulation by the commission, a reorganization committee shall provide for the selection of a presiding officer and secretary either of whom may but are not required to be members of the committee, adopt the standards and procedures which it deems advisable, fix the time and place for meetings of the committee, and determine the manner and method to be followed by the committee in its study, report, and recommendation.

SEC. 168. Section 56842 of the Government Code is repealed.

SEC. 169. Section 56842 is added to the Government Code, to read:

56842. A quorum shall be deemed to be present at a meeting of a reorganization committee if members representing one-half or more of the subject districts are present. Each subject district shall be entitled to one vote at any reorganization committee meeting, which vote shall be determined by a majority of the members of the district present at the meeting.

SEC. 170. Section 56842.2 of the Government Code is repealed.

SEC. 171. Section 56842.5 of the Government Code is repealed.

SEC. 172. Section 56842.6 of the Government Code is repealed.

SEC. 173. Section 56842.7 of the Government Code is repealed.

SEC. 174. Section 56843 of the Government Code is repealed.

SEC. 175. Section 56843 is added to the Government Code, to read:

56843. If a reorganization committee does not complete and submit its report and recommendation before the date specified by the commission or, prior to that date, if members of the committee representing one-half or more of the subject districts report to the commission that the committee is unable to agree upon the report and recommendation, the commission may either order the discharge of the committee, or appoint additional members to the committee, not to exceed the maximum number authorized for a single subject district, to represent the public and order the committee, as so enlarged, to continue its study.

SEC. 176. Section 56844 of the Government Code is repealed.

SEC. 177. Section 56844 is added to the Government Code, to read:

56844. If the commission orders the discharge of a reorganization committee, the commission may make a study, report, and recommendation upon a plan of reorganization in the place of the reorganization committee.

SEC. 178. Section 56844.1 of the Government Code is repealed.

SEC. 179. Section 56844.2 of the Government Code, as added by Chapter 911 of the Statutes of 1997, is repealed.

SEC. 180. Section 56844.2 of the Government Code, as added by Chapter 590 of the Statutes of 1998, is repealed.

SEC. 181. Section 56845 of the Government Code is repealed.

SEC. 182. Section 56845 is added to the Government Code, to read:

56845. If the commission appoints additional members to the reorganization committee to represent the public and orders the reorganization committee, as so enlarged, to continue its study, the additional members shall have all of the rights and powers of members representing a single subject district, including participation in all studies, reports, and recommendations, attendance at all meetings, and the casting of a single vote on behalf of all of the additional members on any matter before the committee.

SEC. 183. Section 56846 of the Government Code is repealed.

SEC. 184. Section 56846 is added to the Government Code, to read:

56846. Every officer of any affected county, affected city, or affected district shall make available to a reorganization committee any records, reports, maps, data, or other documents which in any way affect or pertain to the committee's study, report, and recommendation and shall confer with the committee concerning the problems and affairs of that county, city, or district.

SEC. 185. Section 56847 of the Government Code is repealed.

SEC. 186. Section 56847 is added to the Government Code, to read:

56847. Upon completion of the study of a reorganization committee, the committee shall prepare and submit to the commission a report and recommendation containing all of the following:

(a) A brief summary of the nature and extent of the study of the committee.

(b) A full and complete description of the plan of reorganization and any alternative plans of reorganization which were studied by the committee.

(c) The recommendation of the committee for the approval or disapproval of all or any part of the plan of reorganization and of any alternative plans of reorganization.

SEC. 187. Section 56848 is added to the Government Code, to read:

56848. Approval by a reorganization committee of the report and recommendation shall require the affirmative vote of more than one-half of the subject districts represented on the reorganization committee.

SEC. 188. Section 56848.3 of the Government Code is repealed.

SEC. 189. Section 56848.5 of the Government Code is repealed.

SEC. 190. Section 56849 of the Government Code is repealed.

SEC. 191. Section 56849 is added to the Government Code, to read:

56849. The reorganization committee shall file the original of its report and recommendation with the executive officer and a copy of the report and recommendation with the clerk of each subject district. Upon filing that report and recommendation with the executive officer, the reorganization committee shall be terminated. However, the commission may cause the committee to be reconvened at any time for the sole purpose of correcting or clarifying any error, omission, or uncertainty appearing in the report and recommendation, as determined by the commission.

SEC. 192. Section 56850 of the Government Code is repealed.

SEC. 193. Section 56851 of the Government Code is repealed.

SEC. 194. Section 56852 of the Government Code is repealed.

SEC. 195. Section 56852.3 of the Government Code is repealed.

SEC. 196. Section 56852.5 of the Government Code is repealed.

SEC. 197. Section 56853 of the Government Code is repealed.

SEC. 198. Section 56853 is added to the Government Code, to read:

56853. (a) If a majority of the members of each of the legislative bodies of two or more local agencies adopt substantially similar resolutions of application making proposals either for the consolidation of districts or for the reorganization of all or any part of the districts into a single local agency, the commission shall approve, or conditionally approve, the proposal. The commission shall order the consolidation or reorganization without an election, except as otherwise provided in subdivision (b) of Section 57081.

(b) Before ordering any material change in the provisions or the terms and conditions of the consolidation or reorganization, as set forth in the proposals of the local agencies, the commission shall direct the executive officer to give each subject agency mailed notice of that change. The commission shall not, without the written consent of all subject agencies, take any further action on the consolidation or reorganization for 30 days following that mailing. Upon written demand by any subject agency, filed with the executive officer during that 30-day period, the commission shall make determinations upon the proposals only after notice and hearing proposals. If no written demand is filed, the commission may make those determinations without notice and hearing. The application of any provision of this subdivision may be waived by consent of all of the subject agencies.

(c) Where the commission has initiated a change of organization or reorganization affecting more than one special district, the commission may utilize and is encouraged to utilize a reorganization committee to review the proposal.

SEC. 199. Section 56854 of the Government Code is repealed.

SEC. 200. Section 56854 is added to the Government Code, to read:

56854. (a) Notwithstanding Sections 57077 and 57107, the commission shall order (1) the consolidation of districts, (2) dissolution, (3) merger, or (4) the establishment of a subsidiary district, or (5) a reorganization that includes any of these changes of organization without an election, except that an election shall be held in each affected city or district if there are written protests as follows:

(1) Where the proposal was not initiated by the commission, and where an affected city or district has not objected by resolution to the proposal, a written protest has been submitted that meets the requirements specified in subdivisions (b) and (c) of Section 57081.

(2) Where the proposal was not initiated by the commission, and where an affected city or district has objected by resolution to the proposal, a written protest has been submitted that meets the requirements specified in paragraphs (1) and (2) of subdivision (a) and subdivision (b) of Section 57114.

(3) Where the proposal was initiated by the commission, and regardless of whether an affected city or district has objected to the proposal by resolution, a written protest has been submitted that meets the requirements of Section 57113.

(b) Notwithstanding subdivision (a), the commission shall not order a merger or establishment of a subsidiary district without the consent of the affected city.

(c) This section shall not apply to any proposal for a change of organization or reorganization that is submitted to the commission before January 1, 2003, where the Goleta Sanitary District or the Goleta

West Sanitary District is an affected district. 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 following special circumstances:

The voters of the Goleta Sanitary District previously voted against a proposed consolidation with the Goleta West Sanitary District by a margin of two to one. More recently, a reorganization proposal was submitted to the commission in Santa Barbara County that would have combined the Goleta Sanitary District and the Goleta West Sanitary District under circumstances where no opportunity for confirmation by the Goleta Sanitary District voters would be available. In light of the issues that were raised in connection with these earlier consolidation and reorganization proposals, a five-year moratorium on the application of Section 56854 to proposals affecting the Goleta Sanitary District or the Goleta West Sanitary District is necessary to ensure an opportunity for voter confirmation.

SEC. 201. Section 56855 of the Government Code is repealed.

SEC. 202. Section 56855 is added to the Government Code, to read:

56855. (a) This section shall apply to any proposal which contains the annexation of territory to a fire protection district which is organized pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and the affected territory is or is proposed to be all or part of a city which is within the fire protection district.

(b) Prior to the adoption by the local agency formation commission of a resolution making determinations, the district may request and the commission shall impose, as a term and condition, a requirement that the legislative body of the city shall enter into a contract with the district. The contract shall require:

(1) That the affected territory shall remain part of the district for a period of at least 10 years.

(2) That the city shall pay the cost of services provided by the district. This payment shall be in amounts and on terms specified in the contract.

(3) Any other conditions to which the city and the district mutually agree.

SEC. 203. Section 56856 of the Government Code is repealed.

SEC. 204. Section 56856 is added to the Government Code, to read:

56856. (a) The commission shall not approve or conditionally approve a change of organization or reorganization that would result in the annexation to a special district of territory that is within a farmland security zone created pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Division 1 if that special district provides or would provide facilities or services related to sewers, nonagricultural water, or streets and roads, unless the facilities or services benefit land

uses that are allowed under the farmland security zone contract and the landowner consents to the change of organization or reorganization.

(b) This section shall not apply during the three-year period preceding the termination of a farmland security zone contract under Article 7 (commencing with Section 51296) of Chapter 7 of Division 1.

SEC. 205. Section 56857 of the Government Code is repealed.

SEC. 205.5. Section 56857 is added to the Government Code, to read:

56857. (a) Upon receipt by the commission of a proposed change of organization or reorganization that includes the annexation or territory to any district, if the proposal is not filed by the affected district the commission shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any district to which an annexation of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subsection (a), an affected district may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If an affected district has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the district.

SEC. 206. Section 56858 of the Government Code is repealed.

SEC. 207. Section 56859 of the Government Code is repealed.

SEC. 208. Article 3 (commencing with Section 56859) is added to Chapter 5 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 3. Formation

56859. Proceedings for the formation of a district shall be conducted as authorized in the principal act of the district proposed to be formed and Section 56100.

56860. If a proposal for formation of a new district is made by petition, the petition shall comply with the signature requirements and content of a petition for formation of the district as set forth in the principal act under which the new district is proposed to be formed.

56860.5. If a petition is for consolidation of districts or formation of a new district, the petition may propose a name for the new or consolidated district.

56861. (a) Within 10 days after receiving a proposal to form a subsidiary district, the executive officer shall notify by certified mail the district or districts which are the subject of the proposal.

(b) Within 35 days after receiving the notice from the executive officer, the board of directors of the subject district or districts may do either of the following:

(1) Adopt a resolution consenting to the subsidiary district proposal, with or without requesting additional terms and conditions.

(2) Adopt a resolution of intention to file an alternative proposal to the subsidiary district proposal.

(c) Any resolution adopted under paragraph (1) or (2) of subdivision (b) shall immediately be filed with the executive officer.

56862. (a) If a district files a resolution of intention to file an alternative proposal pursuant to paragraph (2) of subdivision (b) of Section 56861, the executive officer shall take no further action on the original proposal to form a subsidiary district for a period of 70 days. During this period, the district which has filed a resolution of intention shall prepare and submit a completed application for the alternative proposal in a form similar to the original proposal, as prescribed by the commission.

(b) A district which has filed a resolution of intention to file an alternative proposal but which does not file a completed application within the prescribed time period, shall be deemed to have consented to the original proposal to form a subsidiary district.

(c) After receiving an alternative proposal, the executive officer shall analyze and report on both the original proposal and the alternative proposal concurrently and set both for hearing by the commission in order that both proposals may be considered simultaneously at a single hearing.

(d) ''Alternative proposal,'' as used in this section, means an alternative proposal to a subsidiary district proposal as provided for in Section 56861.

56863. (a) Within 35 days following the conclusion of a hearing on an original and an alternative proposal to form a subsidiary district, the commission shall adopt its resolution of determination, which shall do one of the following:

(1) Deny both the original proposal and the alternative proposal.

(2) Approve both the original proposal and the alternative proposal.

(3) Approve one proposal and deny the other.

(b) If the commission approves both proposals, it shall adopt an order directing the board of supervisors to consider both proposals at a single hearing and to do one of the following:

(1) Deny both the original proposal and the alternative proposal.

(2) Approve both the original proposal and the alternative proposal.

(3) Approve one proposal and deny the other.

(c) ''Alternative proposal,'' as used in this section, means an alternative proposal to a subsidiary district proposal as provided for in Section 56861.

SEC. 209. Article 4 (commencing with Section 56864) is added to Chapter 5 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 4. Initiation by Petition

56864. Petitions for the annexation of territory to, or detachment of territory from, a district shall be signed as follows:

(a) For a registered voter district, by any of the following:

(1) Not less than 25 percent of the registered voters within the territory proposed to be annexed.

(2) Not less than 25 percent of the number of landowners within the territory proposed to be annexed who also own not less than 25 percent of the assessed value of land within the territory.

(b) For a landowner-voter district, by not less than 25 percent of the number of landowners owning land within the territory proposed to be annexed who also own not less than 25 percent of the assessed value of land within the territory.

56864.1. (a) A petition for reorganization shall be signed so as to comply with the applicable signature requirements of this article with respect to each of the various changes proposed in the petition.

(b) If a proposal for reorganization includes a proposal for the formation of a new district, the petition shall comply with the signature requirements, if any, of a petition for formation of the district, as set forth in the principal act designated in the petition for formation, and if there are no such requirements, then the requirements of this part pertaining to dissolution.

(c) If a proposal for reorganization includes incorporation, the petition shall comply with the signature requirements for incorporation.

56864.3. If a person is qualified to sign for two or more of the changes of organization proposed by the petition, that person need sign the petition only once and his or her signature shall be counted as if that person had signed and requested each change of organization.

56865. Petitions for the consolidation of two or more districts shall be signed as follows:

(a) For registered voter districts, by not less than 5 percent of the registered voters within each of the several districts.

(b) For landowner-voter districts, by landowner-voters within each of the several districts constituting not less than 5 percent of the number of landowner-voters owning land within each of the several districts and

who also own not less than 5 percent of the assessed value of land within each of the several districts.

56866. Petitions for a merger of a district of limited powers which overlaps a city, or for the establishment of the district as a subsidiary district of the city, shall be signed as follows:

(a) For a resident voter district, by either of the following:

(1) Five percent of the registered voters of the district.

(2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.

(b) For a landowner-voter district, by either of the following:

(1) Five percent of the number of landowner-voters within the district who also own not less than 5 percent of assessed value of land within the district.

(2) Five percent of the registered voters residing within the territory of the city outside the boundaries of the district.

56870. Except as otherwise provided in Section 56871, petitions for the dissolution of a district shall be signed as follows:

(a) For resident voter districts, by either of the following:

(1) Not less than 10 percent of the registered voters within the district.

(2) Not less than 10 percent of the number of landowners within the district who also own not less than 10 percent of the assessed value of land within the district.

(b) For landowner-voter districts, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

56871. A petition for the dissolution of a registered voter district, signed by three or more registered voters within the district or by three or more landowners within a landowner-voter district, shall be deemed to be a sufficient petition, if, in addition to the matters required by Section 56700, the petition recites that the district has been in existence for at least three years and states, on information and belief, that the corporate powers of the district have not been used and that one or more of the following conditions have existed or now exist:

(a) That during the three-year period preceding the date of the first signature upon the petition any of the following events have not occurred:

(1) There has not been a duly selected and acting quorum of the board of directors of the district.

(2) The board of directors has not furnished or provided services or facilities of substantial benefit to residents, landowners, or property within the district.

(3) The board of directors has not levied or fixed and collected any taxes, assessments, service charges, rentals, or rates or expended the proceeds of those levies or collections for district purposes.

(b) That during the one-year period preceding the date of the first signature upon the petition a quorum of the duly selected and acting board of directors has not met for the purpose of transacting district business.

(c) That, upon the date of the first signature upon the petition, the district had no assets, other than money in the form of cash, investments, or deposits.

SEC. 210. Article 5 (commencing with Section 56875) is added to Chapter 5 of Part 3 of Division 3 of Title 5 of the Government Code, to read:

Article 5. Miscellaneous

56875. If any sufficient petition or resolution of application shall propose, as a part of the petition or resolution of application, that the district shall furnish gas or electric service, as provided in Sections 56129 to 56131, inclusive, a certified copy of the report of the Public Utilities Commission shall be on file with the executive officer prior to setting that petition or resolution for public hearing by the commission.

56876. In any order approving a proposal for an annexation to, or detachment from, a district, the commission may determine that any election called upon the question of confirming an order for the annexation or detachment shall be called, held, and conducted upon that question under either of the following conditions:

(a) Only within the territory ordered to be annexed or detached.

(b) Both within the territory ordered to be annexed or detached and within all or any part of the district which is outside of the territory.

SEC. 211. Chapter 6 (commencing with Section 56880) is added to Part 3 of Division 3 of Title 5 of the Government Code, to read:

CHAPTER 6. COMMISSION DECISION

Article 1. Determinations

56880. At any time not later than 35 days after the conclusion of the hearing, the commission shall adopt a resolution making determinations approving or disapproving the proposal, with or without conditions, the plan of reorganization, or any alternative plan of reorganization as set forth in the report and recommendation of a reorganization committee. If the commission disapproves the proposal, plan of reorganization, or any alternative plan of reorganization, no further proceedings shall be taken on those proposals or plans.

56881. The resolution making determinations shall also do all of the following:

(a) Make any of the findings or determinations authorized or required pursuant to Section 56375.

(b) For any proposal initiated by the commission pursuant to subdivision (a) of Section 56375, make both of the following determinations:

(1) Public service costs of a proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service.

(2) A change or organization or reorganization that is authorized by the commission promotes public access and accountability for community services needs and financial resources.

(c) If applicable, assign a distinctive short-term designation to the affected territory and a description of the territory.

(d) Initiate protest proceedings pursuant to Part 4 (commencing with Section 57000) in compliance with the resolution.

56882. The executive officer shall mail a copy of the resolution adopted by the commission making determinations addressed to each of the following persons or entities:

(a) The proponents, if any, where the proceedings for change of organization were initiated by petition.

(b) Each affected local agency whose boundaries would be changed by the proposal.

56883. The executive officer may, before the completion of a proceeding, on good cause being shown, correct clerical errors or mistakes made through inadvertence, surprise, or excusable neglect that may be contained in the resolution adopted by the commission making determinations, upon written request by any member of the commission, by the executive officer, or by any affected agency. A correction made pursuant to this section shall not be cause for filing a request pursuant to Section 56895.

56884. (a) Except as otherwise provided in subdivision (b), if the commission wholly disapproves any proposal:

(1) No further proceedings shall be taken on that proposal.

(2) No similar proposal involving the same or substantially the same territory shall be initiated for one year after the date of adoption of the resolution terminating proceedings.

(b) The commission may waive the requirements of subdivision (a) if it finds those requirements are detrimental to the public interest.

Article 2. Terms and Conditions

56885. The commission may, at any time, authorize any legislative body holding a hearing pursuant to this division, to continue the hearing to a date or dates extending beyond the dates specified in this division.

56885.5. (a) In any commission order giving approval to any change of organization or reorganization, the commission may make that approval conditional upon any of the following factors:

(1) Any of the conditions set forth in Section 56886.

(2) The initiation, conduct, or completion of proceedings for another change of organization or a reorganization.

(3) The approval or disapproval, with or without election, as may be provided by this division, of any resolution or ordinance ordering that change of organization or reorganization.

(4) With respect to any commission determination to approve the disincorporation of a city, the dissolution of a district, or the reorganization or consolidation of agencies which results in the dissolution of one or more districts or the disincorporation of one or more cities, a condition prohibiting an agency being dissolved from taking any of the following actions, unless it first finds that an emergency situation exists as defined in Section 54956.5:

(A) Approving any increase in compensation or benefits for members of the governing board, its officers, or the executive officer of the agency.

(B) Appropriating, encumbering, expending, or otherwise obligating, any revenue of the agency beyond that provided in the current budget at the time the dissolution is approved by the commission.

(b) If the commission so conditions its approval, the commission may order that any further action pursuant to this division be continued and held in abeyance for the period of time designated by the commission, not to exceed six months from the date of that conditional approval.

(c) The commission order may also provide that any election called upon any change of organization or reorganization shall be called, held, and conducted before, upon the same date as, or after the date of any election to be called, held, and conducted upon any other change of organization or reorganization.

(d) The commission order may also provide that in any election at which the questions of annexation and district reorganization or incorporation and district reorganization are to be considered at the same time, there shall be a single question appearing on the ballot upon the issues of annexation and district reorganization or incorporation and district reorganization.

56886. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. However, none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements:

(a) The payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use or right

of use of all or any part of the existing property, real or personal, of any city, county, or district.

(b) The levying or fixing and the collection of any of the following, for the purpose of providing for any payment required pursuant to subdivision (a):

(1) Special, extraordinary, or additional taxes or assessments.

(2) Special, extraordinary, or additional service charges, rentals, or rates.

(3) Both taxes or assessments and service charges, rentals, or rates.

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, affected counties, affected districts, and affected territory of liability for payment of all or any part of principal, interest, and any other amounts which shall become due on account of all or any part of any outstanding or then authorized but thereafter issued bonds, including revenue bonds, or other contracts or obligations of any city, county, district, or any improvement district within a local agency, and the levying or fixing and the collection of any (1) taxes or assessments, or (2) service charges, rentals, or rates, or (3) both taxes or assessments and service charges, rentals, or rates, in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for that payment.

(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, affected county, or affected district for payment of the principal of any bonded indebtedness is increased or decreased, the term and condition may specify the amount, if any, of that increase or decrease which shall be included in, or excluded from, the outstanding bonded indebtedness of that entity for the purpose of the application of any statute or charter provision imposing a limitation upon the principal amount of outstanding bonded indebtedness of the entity.

(e) The formation of a new improvement district or districts or the annexation or detachment of territory to, or from, any existing improvement district or districts.

(f) The incurring of new indebtedness or liability by, or on behalf of, all or any part of any local agency, including territory being annexed to any local agency, or of any existing or proposed new improvement district within that local agency. The new indebtedness may be the obligation solely of territory to be annexed if the local agency has the authority to establish zones for incurring indebtedness. The indebtedness or liability shall be incurred substantially in accordance with the laws otherwise applicable to the local agency.

(g) The issuance and sale of any bonds, including authorized but unissued bonds of a local agency, either by that local agency or by a local

agency designated as the successor to any local agency which is extinguished as a result of any change of organization or reorganization.

(h) The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal.

(i) The disposition, transfer, or division of any moneys or funds, including cash on hand and moneys due but uncollected, and any other obligations.

(j) The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or of any other property, real or personal.

(k) The establishment, continuation, or termination of any office, department, or board, or the transfer, combining, consolidation, or separation of any offices, departments, or boards, or any of the functions of those offices, departments, or boards, if, and to the extent that, any of those matters is authorized by the principal act.

(*l*) The employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights.

(m) The designation of a city, county, or district, as the successor to any local agency which is extinguished as a result of any change of organization or reorganization, for the purpose of succeeding to all of the rights, duties, and obligations of the extinguished local agency with respect to enforcement, performance, or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of the extinguished local agency.

(n) The designation of (1) the method for the selection of members of the legislative body of a district or (2) the number of those members, or (3) both, where the proceedings are for a consolidation, or a reorganization providing for a consolidation or formation of a new district and the principal act provides for alternative methods of that selection or for varying numbers of those members, or both.

(o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division.

(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 57202.

(q) Any terms and conditions authorized or required by the principal act with respect to any change of organization.

(r) The continuation or provision of any service provided at that time, or previously authorized to be provided by an official act of the local agency.

(s) The levying of assessments, including the imposition of a fee pursuant to Section 50029 or 66484.3 or the approval by the voters of general or special taxes. For the purposes of this section, imposition of

a fee as a condition of the issuance of a building permit does not constitute direct regulation of land use, property development, or subdivision requirements.

(t) The extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency or a successor local agency in the affected territory.

(u) The transfer of authority and responsibility among any affected cities, affected counties, and affected districts for the administration of special tax and special assessment districts, including, but not limited to, the levying and collecting of special taxes and special assessments, including the determination of the annual special tax rate within authorized limits; the management of redemption, reserve, special reserve, and construction funds; the issuance of bonds which are authorized but not yet issued at the time of the transfer, including not yet issued portions or phases of bonds which are authorized; supervision of construction paid for with bond or special tax or assessment proceeds; administration of agreements to acquire public facilities and reimburse advances made to the district; and all other rights and responsibilities with respect to the levies, bonds, funds, and use of proceeds that would have applied to the local agency that created the special tax or special assessment district.

(v) Any other matters necessary or incidental to any of the terms and conditions specified in this section.

56886.5. If a proposal includes the formation of a new government, the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services.

56887. Any change of organization or reorganization may be conditionally approved by a local agency formation commission subject to the certification by the California Coastal Commission of an amendment to the local coastal program of a city or a county.

56887.5. If any change of organization or reorganization pertains to city or district territory which is located, in whole or in part, within the boundaries of any city or county, any terms and conditions authorized by Section 56886 may be made applicable to that city or county. However, no indebtedness or liability which is subject to the requirement of an election, under the provisions of Section 18 of Article XVI of the California Constitution, shall be incurred or assumed by any city or county, except as provided in Section 18 of Article XVI of the California Constitution.

56888. (a) This section shall only apply to a special reorganization.

(b) All public employees to which Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 applies shall continue to be deemed public employees of the original local agency or of the newly incorporated local agency for all the purposes of that chapter, including, but not limited to, the continuation and application of any collective bargaining agreement that applies to these employees, and all representational and collective bargaining rights under that chapter.

(c) Any existing collective bargaining agreement shall remain in effect and be fully binding on the original local agency or on the newly incorporated local agency, and on the employee organizations that are parties to the agreement for the balance of the term of the agreement, and until a subsequent agreement has been established.

(d) Any existing retiree benefits, including, but not limited to, health, dental, and vision care benefits, shall not be diminished.

(e) Notwithstanding any other provision of law, an employee organization that has been recognized as the exclusive representative of local agency public employees affected by a special reorganization shall retain exclusive representation of the unit employees of the original local agency, or of the newly incorporated local agency.

56889. If any commission order approving or conditionally approving a change of organization or reorganization would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), for which the commission has determined pursuant to Section 56754 that the city shall succeed to the contract, the commission shall impose a condition that requires the city to adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Sections 51231, 51237, and 51237.5.

56890. Any of the terms and conditions authorized by Section 56886 may be made applicable to all or any part of any city or district or any improvement district within that local agency or any territory annexed to, or detached from, any city or district or improvement district within that local agency.

Article 3. Reconsideration

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school

district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date specified in the notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations which shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56854.

Article 4. Amendment

56897. If pursuant to Section 56895, the commission approves any addition, deletion, amendment, or revision of its resolution making determinations, further proceedings for the change of organization or reorganization shall be taken in compliance with that addition, deletion, amendment, or revision. Any provision of this division requiring compliance with the resolution adopted by the commission making determinations shall be deemed to include any addition, deletion, amendment, or revision made to that resolution.

56898. Whenever the executive officer is required by law to prepare an impartial analysis of a ballot proposition for approval by the commission, the commission may, by regulation, provide a procedure for approval or modification of the executive officer's analysis.

In any event, the analysis shall be prepared and submitted to the commission in sufficient time for the commission to consider and approve or modify the analysis, and submit the analysis to the officials conducting the election not later than the last day for submission of rebuttal arguments. The impartial analysis submitted by the commission shall not exceed 500 words in length and shall include a general description of the affected territory.

SEC. 211.5. Section 56895 is added to the Government Code, to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which

the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations which shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

SEC. 212. Section 57000 of the Government Code is amended to read:

57000. (a) After adoption of a resolution making determinations by the commission pursuant to Part 3 (commencing with Section 56650), protest proceedings for a change of organization or reorganization shall be taken pursuant to this part.

(b) If a proposal is approved by the commission, with or without amendment, wholly, partially, or conditionally, the commission shall conduct proceedings in accordance with this part. The proceedings shall be conducted and completed pursuant to those provisions which are applicable to the proposal and the territory contained in the proposal as it is approved by the commission. If the commission approves the proposal with modifications or conditions, proceedings shall be conducted and completed in compliance with those modifications or conditions.

(c) Any reference in this part to the commission also means the executive officer for any function which the executive officer will perform pursuant to a delegation of authority from the commission.

(d) When the commission makes a determination pursuant to this division that will require an election to be conducted, it shall inform the board of supervisors or the city council of the affected city of that determination and request the board or the city council to direct the elections official to conduct the necessary election.

(e) When a board of supervisors or a city council is informed by the commission that a determination has been made which requires an election, it shall direct the elections official to conduct the necessary election. The board or council shall do all of the following:

(1) Call, provide for, and give notice of a special election or elections upon that question.

(2) Fix a date of election.

(3) Designate precincts and polling places.

(4) Take any other action necessary to call, provide for, and give notice of the special election or elections and to provide for the conduct and the canvass of returns of the election, as determined by the commission.

(f) Any provision in this part which requires that an election be called, held, provided for, or conducted shall mean that the procedures specified in subdivisions (d) and (e) shall be followed.

SEC. 213. Section 57001 of the Government Code is amended to read:

57001. If a certificate of completion for a change of organization or reorganization has not been filed within one year after the commission approves a proposal for that proceeding, the proceeding shall be deemed abandoned unless prior to the expiration of that year the commission authorizes an extension of time for that completion. The extension may be for any period deemed reasonable to the commission for completion of necessary prerequisite actions by any party. If a proceeding has not been completed because of the order or decree of a court of competent jurisdiction temporarily enjoining or restraining the proceedings, this shall not be deemed a failure of completion and the one-year period shall be tolled for the time that order or decree is in effect.

SEC. 214. Section 57002 of the Government Code is amended to read:

57002. (a) Within 35 days following the adoption of the commission's resolution making determinations, and following the reconsideration period specified in subdivision (b) of Section 56895 the executive officer of the commission shall set the proposal for hearing and give notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1. The

date of that hearing shall not be less than 15 days, or more than 60 days, after the date the notice is given.

(b) Where the proceeding is for the establishment of a district of limited powers as a subsidiary district of a city, upon the request of the affected district, the date of the hearing shall be at least 90 days, but no more than 135 days, from the date the notice is given.

(c) If authorized by the commission pursuant to Section 56663, a change of organization or reorganization may be approved without notice, hearing, and election.

SEC. 214.5. Section 57002 of the Government Code is amended to read:

57002. (a) Within 35 days following the adoption of the commission's resolution making determinations, and following the reconsideration period specified in subdivision (b) of Section 56895, the executive officer of the commission shall set the proposal for hearing and give notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1. The date of that hearing shall not be less than 15 days, or more than 60 days, after the date the notice is given.

(b) Notwithstanding subdivision (a), for any proposal that includes an incorporation, the clerk of the conducting authority shall set the proposal for hearing within 15 days following the adoption of the commission's resolution making determinations. The hearing shall be set for the next regularly scheduled hearing that provides sufficient time to give public notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1.

(c) Where the proceeding is for the establishment of a district of limited powers as a subsidiary district of a city, upon the request of the affected district, the date of the hearing shall be at least 90 days, but no more than 135 days, from the date the notice is given.

(d) If authorized by the commission pursuant to Section 56663, a change of organization or reorganization may be approved without notice, hearing, and election.

SEC. 215. Section 57003 of the Government Code is amended to read:

57003. Once notice is given by the executive officer of the commission pursuant to this chapter, and until proceedings are completed or terminated pursuant to this part, no conflicting petition or resolution of application seeking the change of organization or reorganization of all or part of the territory described by the notice given by the executive officer shall be filed with, or acted on, by the commission.

SEC. 216. Section 57004 of the Government Code is repealed.

SEC. 217. Section 57005 of the Government Code is repealed.

SEC. 218. Section 57006 of the Government Code is repealed.

SEC. 219. Section 57007 of the Government Code is amended to read:

57007. Except when a district formation is part of a reorganization, protest proceedings shall be conducted as set forth in the principal act of the district to be formed, and commission protest proceedings shall not apply, except for the provisions relating to the completion and effective date of a change of organization or reorganization contained in Chapter 3 (commencing with Section 57200). When the district formation is part of a reorganization, all of the proceedings shall be conducted pursuant to this part and Section 56100.

SEC. 220. Section 57008 of the Government Code is amended to read:

57008. For any proposal initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall hold a public protest hearing in the affected territory.

SEC. 221. Section 57025 of the Government Code is amended to read:

57025. (a) The executive officer of the commission shall give notice of the protest hearing to be held on the proposal by publication pursuant to Sections 56153 and 56154 and by posting pursuant to Sections 56158 and 56159.

(b) The executive officer shall also give mailed notice to each affected city, affected district, or affected county, the proponents, if any, all landowners owning land within any territory proposed to be formed into, or to be annexed to, or detached from, an improvement district within any city or district, and to persons requesting special notice, in accordance with the provisions of Sections 56155 to 56157, inclusive.

(c) In the case of a proposed annexation to a city of affected territory consisting of 75 acres or less, the executive officer of the commission shall give mailed notice to each landowner within the affected territory.

(d) In the case of a proposed change of organization or reorganization that would result in the extension of any previously authorized special tax or benefit assessment to the affected territory, the executive officer of the commission shall give mailed notice to each landowner within the affected territory.

SEC. 222. Section 57026 of the Government Code is amended to read:

57026. The mailed notice required to be given by Section 57025 shall contain all of the following information:

(a) A statement of the distinctive short form designation assigned by the commission to the proposal.

(b) A statement of the manner in which, and by whom, proceedings were initiated. However, a reference to the proponents, if any, shall be sufficient where proceedings were initiated by a petition.

(c) A description of the exterior boundaries of the subject territory.

(d) A description of the particular change or changes of organization proposed for each of the subject districts or cities and new districts or new cities proposed to be formed, and any terms and conditions to be applicable. The description may include a reference to the commission's resolution making determinations for a full and complete description of the change of organization or reorganization, and the terms and conditions.

(e) A statement of the reason or reasons for the change of organization or reorganization as set forth in the proposal submitted to the commission.

(f) (1) Except as otherwise provided in paragraph (2), a statement of the time, date, and place of the protest hearing on the proposed change of organization or reorganization.

(2) Notwithstanding paragraph (1), if inhabited territory is proposed to be annexed to a city with more than 100,000 residents which is located in a county with a population of over 4,000,000 the date shall be at least 90 days, but not more than 105 days, after the date of adoption of the resolution initiating the proceedings. The resolution shall specify a date 90 days prior to the hearing when registered voters may begin to file protests.

(g) If the subject territory is inhabited and the change of organization or reorganization provides for the submission of written protests, a statement that any owner of land within the territory, or any registered voter residing within the territory, may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

(h) If the subject territory is uninhabited and the change of organization or reorganization provides for submission of written protests, a statement that any owner of land within the territory may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

SEC. 223. Section 57050 of the Government Code is amended to read:

57050. (a) The protest hearing on the proposal shall be held by the commission on the date and at the time specified in the notice given by the executive officer. The hearing may be continued from time to time but not to exceed 60 days from the date specified for the hearing in the notice.

(b) At the protest hearing, prior to consideration of protests, the commission's resolution making determinations shall be summarized. At that hearing, the commission shall hear and receive any oral or written protests, objections, or evidence which is made, presented, or filed. Any person who has filed a written protest may withdraw that protest at any time prior to the conclusion of the hearing.

SEC. 223.5. Section 57050 of the Government Code is amended to read:

57050. (a) The protest hearing on the proposal shall be held by the commission on the date and at the time specified in the notice given by the executive officer. The hearing may be continued from time to time but not to exceed 60 days from the date specified for the hearing in the notice. The hearing on a proposal that includes an incorporation may be continued from time to time but not to exceed 35 days from the date specified for the hearing in the notice.

(b) At the protest hearing, prior to consideration of protests, the commission's resolution making determinations shall be summarized. At that hearing, the commission shall hear and receive any oral or written protests, objections, or evidence which is made, presented, or filed. Any person who has filed a written protest may withdraw that protest at any time prior to the conclusion of the hearing.

SEC. 224. Section 57051 of the Government Code is amended to read:

57051. At any time prior to the conclusion of the protest hearing in the notice given by the executive officer, but not thereafter, any owner of land or any registered voter within inhabited territory proposed to be annexed or detached, or any owner of land within uninhabited territory proposed to be annexed or detached, may file a written protest against the annexation or detachment. Each written protest shall state whether it is made by a landowner or registered voter and the name and address of the owner of the land affected and the street address or other description sufficient to identify the location of the land or the name and address of the registered voter as it appears on the affidavit of registration. Protests may be made on behalf of an owner of land by an agent authorized in writing by the owner to act as agent with respect to that land. Protests may be made on behalf of a private corporation which is an owner of land by any officer or employee of the corporation without written authorization by the corporation to act as agent in making that protest.

Each written protest shall show the date that each signature was affixed to the protest. All signatures without a date or bearing a date prior to the date of publication of the notice shall be disregarded for purposes of ascertaining the value of any written protests.

SEC. 225. Section 57052 of the Government Code is amended to read:

57052. Upon conclusion of the protest hearing, the commission shall determine the value of written protests filed and not withdrawn. The value of written protests shall be determined in the same manner prescribed in Sections 56707, 56708, and 56710 for determining the sufficiency of petitions filed with the commission.

SEC. 226. Section 57053 of the Government Code is amended and renumbered to read:

56886.3. If the terms and conditions of any change of organization provide for the formation of a new improvement district, or the annexation or detachment of territory to, or from, an existing improvement district, the commission shall do all of the following:

(a) Exclude any lands proposed to be formed into, or to be annexed to, the improvement district which the commission finds will not be benefited by becoming a part of the improvement district.

(b) Exclude any lands proposed to be detached from an improvement district which the commission finds will be benefited by remaining a part of the improvement district.

SEC. 227. Section 57075 of the Government Code is amended to read:

57075. In the case of registered voter districts or cities, where a change of organization or reorganization consists solely of annexations, detachments, or formation of county service areas, or any combination of those proposals, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions, except as provided in subdivision (b) of Section 57002.

(a) In the case of inhabited territory, take one of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the change of organization or reorganization subject to confirmation by the registered voters residing within the affected territory if written protests have been filed and not withdrawn by either of the following:

(A) At least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory.

(B) At least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory.

(3) Order the change of organization or reorganization without an election if written protests have been filed and not withdrawn by less than 25 percent of the registered voters or less than 25 percent of the

number of owners of land owning less than 25 percent of the assessed value of land within the affected territory.

(b) In the case of uninhabited territory, take either of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the change of organization or reorganization if written protests have been filed and not withdrawn by owners of land who own less than 50 percent of the total assessed value of land within the affected territory.

SEC. 228. Section 57075.5 of the Government Code is amended to read:

57075.5. Notwithstanding Section 57075, if territory proposed to be annexed to a city with more than 100,000 residents is inhabited and is located in a county with a population of over 4,000,000, the commission, not more than 30 days after conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn and shall take one of the following actions:

(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 subject to the confirmation by the voters on the question, and call a special election and submit to the voters residing within the affected territory the question of whether it shall be annexed to the city, if written protests have been filed and not withdrawn by either 15 percent or more of the registered voters within the territory, or 15 percent or more of the number of owners of land who also own not less than 15 percent of the total assessed value of land within the territory.

(c) Order the territory annexed without an election if written protests have been filed and not withdrawn by less than 15 percent of the registered voters within the territory and less than 15 percent of the owners of land who own less than 15 percent of the total assessed value of land within the territory.

SEC. 229. Section 57076 of the Government Code is amended to read:

57076. In the case of landowner-voter districts, where a change of organization or reorganization consists solely of annexations or detachments, or any combination of those proposals, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions, except as provided in subdivision (b) of Section 57002:

(a) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(b) Order the change of organization or reorganization subject to an election within the affected territory if written protests have been filed and not withdrawn represent either of the following:

(1) Twenty-five percent or more of the number of owners of land who also own 25 percent or more of the assessed value of land within the territory.

(2) Twenty-five percent or more of the voting power of landowner voters entitled to vote as a result of owning property within the territory.

(c) Order the change of organization or reorganization without an election if written protests have been filed and not withdrawn by less than 25 percent of the number of owners of land who own less than 25 percent of the assessed value of land within the affected territory.

SEC. 230. Section 57077 of the Government Code is amended to read:

57077. (a) Where a change of organization consists of a dissolution, disincorporation, incorporation, establishment of a subsidiary district, consolidation, or merger, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the change of organization subject to confirmation of the voters, or in the case of a landowner-voter district, subject to confirmation by the landowners, unless otherwise stated in the formation provisions of the enabling statute of the district.

(3) Order the change of organization without election if it is a change of organization that meets the requirements of Section 57081, 57102, or 57107; otherwise, the commission shall take the action specified in paragraph (2).

(b) Where a reorganization consists of one or more dissolutions, incorporations, formations, disincorporations, mergers, establishments of subsidiary districts, consolidations, or any combination of those proposals, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn and take one of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the reorganization subject to confirmation of the voters, or in the case of landowner-voter districts, subject to confirmation by the landowners, unless otherwise stated in the formation provisions of the enabling statute of the district.

(3) Order the reorganization without election if it is a reorganization which meets the requirements of Section 57081, 57102, 57107, or 57111; otherwise, the commission shall take the action specified in paragraph (2).

SEC. 231. Section 57078 of the Government Code is amended to read:

57078. In the case of any reorganization or change of organization, a majority protest shall be deemed to exist and the proposed change of organization or reorganization shall be abandoned if the commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent any of the following:

(a) In the case of uninhabited territory, landowners owning 50 percent or more of the assessed value of the land within the territory.

(b) In the case of inhabited territory, 50 percent or more of the voters residing in the territory.

(c) In the case of a landowner-voter district, 50 percent or more of the voting power of the voters entitled to vote as a result of owning land within the district.

SEC. 232. Section 57078.5 is added to the Government Code, to read:

57078.5. If a proposed annexation consists of two or more distinct communities, as defined in the county general plan, census unincorporated places listing, or other commonly recognized community designation, as determined by the commission, and any one community has more than 250 registered voters, any protest filed pursuant to Section 57078 shall be accounted separately for that community, unless the annexation is proposed pursuant to Section 56375.3.

SEC. 233. Section 57079 of the Government Code is repealed.

SEC. 234. Section 57079.5 of the Government Code is amended and renumbered to read:

56668.3. (a) If the proposed change of organization or reorganization includes a city detachment or district annexation, except a special reorganization, and the proceeding has not been terminated based upon receipt of a resolution requesting termination pursuant to either Section 56751 or Section 56857, factors to be considered by the commission shall include all of the following:

(1) Whether the proposed annexation will be for the interest of landowners or present or future inhabitants within the district and within the territory proposed to be annexed to the district.

(2) The commission's resolution making determinations.

(3) Any factors which may be considered by the commission as provided in Section 56668.

(4) Any resolution objecting to the action that may be filed by an affected agency.

(5) Any other matters which the commission deems material.

(b) The commission shall give great weight to any resolution objecting to the action that is filed by a city or a district. The commission's consideration shall be based only on financial or service related concerns expressed in the protest. Except for findings regarding the value of written protests, the commission is not required to make any express findings concerning any of the factors considered by the commission.

SEC. 235. 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 Section 56745, the commission shall, not later than 35 days after conclusion of the hearing, adopt a resolution ordering the annexation without an election or shall 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 Section 56375.3, 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 commission, not more than 30 days after conclusion of the hearing, shall make 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 commission, 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. 236. Section 57081 of the Government Code is amended to read:

57081. (a) If authorized by the commission pursuant to Section 56853, the protest proceedings shall be conducted for the consolidation of districts or the reorganization of all or any part of those districts into a single local agency pursuant to this section. The commission shall hold at least one noticed public hearing on the proposal within 30 days after approval of the application by the commission. After the conclusion of

the hearing, the commission shall order the consolidation or reorganization without an election, except as otherwise provided in subdivision (b).

(b) An election shall only be held if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within the territory subject to the consolidation or reorganization who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, the territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within the territory subject to the consolidation or reorganization, owning at least 25 percent of the assessed value of land within the territory.

(c) The petition shall be filed with the commission prior to the conclusion of the protest hearing.

SEC. 237. Section 57082 of the Government Code is amended and renumbered to read:

57100. Any commission resolution ordering a change of organization or a reorganization shall contain all of the following:

(a) A statement that the action is being taken pursuant to this division.

(b) A statement of the type of change of organization or reorganization being acted on.

(c) A description of the exterior boundaries of the territory for each change of organization or reorganization approved by the commission.

(d) The name or names of any new or consolidated city or district.

(e) All of the terms and conditions upon the change of organization or reorganization approved by the commission.

(f) The reasons for the change of organization or reorganization.

(g) A statement as to whether the regular county assessment roll or another assessment roll will be utilized.

(h) A statement that the affected territory will or will not be taxed for existing general bonded indebtedness of any agency whose boundaries are changed.

(i) Any other matters that the commission deems material.

SEC. 238. Section 57082.5 of the Government Code is amended and renumbered to read:

57101. With respect to any proceeding that would result in the annexation to a city of land that is subject to a contract executed pursuant

to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), for which the commission has determined pursuant to Section 56754 that the city may exercise its option to not succeed to the contract, the commission shall include within its resolution ordering the annexation of the territory a finding regarding whether the city intends to not succeed to the contract.

SEC. 239. Section 57083 of the Government Code is amended and renumbered to read:

57102. (a) In any resolution ordering a dissolution, the commission shall make findings upon one or more of the following matters:

(1) That the corporate powers have not been used, as specified in Section 56871, and that there is a reasonable probability that those powers will not be used in the future.

(2) That the district is a registered-voter district and is uninhabited.

(3) That the board of directors of the district has, by unanimous resolution, consented to the dissolution of the district.

(b) If the commission makes any of the findings specified in subdivision (a), the commission may, except as otherwise provided in Section 57103, order the dissolution of the district without election.

SEC. 240. Section 57083.5 of the Government Code is amended and renumbered to read:

57103. Any order in any resolution adopted by the commission on or after January 1, 1986, ordering the dissolution of a local hospital district, organized pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, is subject to confirmation by the voters.

SEC. 240.5. Section 57084 of the Government Code is amended and renumbered to read:

57104. Any order of merger may be adopted for a district of limited powers, including any district previously established as a subsidiary district, if the entire territory of the district is included within the boundaries of a city upon the date of the order.

SEC. 241. Section 57085 of the Government Code is amended and renumbered to read:

57105. An order establishing a district of limited powers as a subsidiary district may be adopted if upon the date of that order the commission determines that either of the following situations exists:

(a) The entire territory of the district is included within the boundaries of a city.

(b) A portion or portions of the territory of the district are included within the boundaries of a city and that portion or portions meet both of the following requirements:

(1) Represent 70 percent or more of the area of land within the district, as determined by reference to the statements and the maps or plats filed

pursuant to Chapter 8 (commencing with Section 54900) of Division 2 of Title 5 for the current fiscal year.

(2) Contain 70 percent or more of the number of registered voters who reside within the district as shown on the voters' register in the office of the county clerk or registrar of voters.

SEC. 241.5. Section 57086 of the Government Code is amended and renumbered to read:

57106. For the purposes of Sections 57104 and 57105, the boundaries shall be determined as of the date of adoption of the order of the commission. Any then pending but uncompleted proceedings for changes in the boundaries of the city or district shall be disregarded.

SEC. 242. Section 57087 of the Government Code is amended and renumbered to read:

57107. In any resolution ordering a merger or establishment of a subsidiary district, the commission shall take one of the following actions:

(a) Order the merger or establishment of the subsidiary district subject to confirmation of the voters upon the questions, as the case may be, of merger, the establishment of a subsidiary district, or both merger and the establishment of a subsidiary district.

(b) Order the merger or establishment of the subsidiary district without election, if the legislative body of the city and the board of directors of the district have by resolution consented to the merger or the establishment of the subsidiary district.

SEC. 243. Section 57087.5 of the Government Code is amended and renumbered to read:

57108. At any time prior to the conclusion of the protest hearing by the commission ordering the district to be merged with or established as a subsidiary district of a city, a petition may be filed with the executive officer referring, by date of adoption, to the commission's resolution making determinations and requesting that any election upon that question be called, held, and conducted only within that district. Any petition so filed shall be immediately examined and certified by the executive officer by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer. The commission shall forward the proposal for an election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the executive officer certifies that any petition so filed was signed by either of the following:

(a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.

(b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also

own not less than 10 percent of the assessed value of land within the district.

SEC. 244. Section 57087.7 of the Government Code is amended and renumbered to read:

57109. At any time prior to the completion of the protest hearing by the commission and the adoption of a resolution ordering a reorganization that includes an incorporation and the establishment of a subsidiary district or a merger, a petition may be filed with the executive officer referring, by date of adoption, to the commission's resolution making determinations and requesting that a separate election be called, held, and conducted only within that district on the establishment of the subsidiary district or the merger. That election shall be conducted at the same time as the election on the incorporation. Any petition so filed shall be immediately examined and certified by the executive officer by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer. The commission shall call, hold, and conduct any election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the executive officer certifies that any petition so filed was signed by either of the following:

(a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.

(b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

SEC. 245. Section 57088 of the Government Code is amended and renumbered to read:

57110. In any resolution approving, subject to the confirmation of the voters, both an original and an alternative proposal as determined by the commission pursuant to paragraph (2) of subdivision (a) of Section 56863, the ballot at the election shall enable those voting to do one of the following:

(a) Disapprove both proposals.

(b) Approve either the original proposal or the alternative proposal.

The board of supervisors shall adopt a resolution confirming the proposal which was favored by a majority of votes cast at the election. Where both proposals were favored by a majority of the votes cast, the board of supervisors shall adopt a resolution confirming the proposal which received the greater number of votes.

SEC. 245.5. Section 57089 of the Government Code is amended and renumbered to read:

57111. In any reorganization proceeding where the component changes of organization would not individually require a confirmation election, no confirmation election shall be required to approve the reorganization.

SEC. 246. Section 57090 of the Government Code is amended to read:

57090. (a) Except as otherwise provided in subdivision (b), if proceedings are terminated, either by majority protest as provided in Sections 57075, 57076, and 57077, or if a majority of voters do not confirm the change of organization or reorganization as provided in Section 57179, no substantially similar proposal for a change of organization or reorganization of the same or substantially the same territory may be filed with the commission within two years after the date of adoption of the certificate of termination adopted by the commission if the proposal included an incorporation or city consolidation and within one year for any other change of organization or reorganization.

(b) The commission may waive the requirements of subdivision (a) if it finds these requirements are detrimental to the public interest.

SEC. 247. Section 57091 of the Government Code is amended and renumbered to read:

57112. (a) Except as otherwise provided in subdivision (b), if proceedings are terminated by failure of a majority of voters to confirm a resolution ordering merger or establishment of a subsidiary district, no new proposal for a merger or establishment of a subsidiary district involving the same district may be filed with the commission within two years of the date of the certification adopted by the commission, pursuant to Section 57179.

(b) The commission may waive the requirements of subdivision (a) if it finds these requirements are detrimental to the public interest.

SEC. 248. Section 57092 of the Government Code is amended and renumbered to read:

57113. (a) Notwithstanding Section 57081, 57102, 57107, 57108, or 57111, for any proposal that was initiated by the commission pursuant to subdivision (a) of Section 56375, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 10 percent of the number of landowners within any affected district within the affected territory who own at least 10 percent of the assessed value of land within the territory. However, if the number of landowners within an affected district is less than 300, the petition

requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the landowners who own at least 25 percent of the assessed value of land within the territory of the affected district.

(B) At least 10 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory. However, if the number of voters entitled to vote within an affected district is less than 300, the petition requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the voters entitled to vote.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 10 percent of the number of landowners within any affected district within the affected territory, owning at least 10 percent of the assessed value of land within the territory. However, if the number of voters entitled to vote within an affected district is less than 300, the petition requesting the proposal to be submitted to the voters shall be signed by at least 25 percent of the voters entitled to vote.

(b) The petition shall be filed with the commission prior to the conclusion of the protest hearing.

SEC. 249. Section 57093 of the Government Code is amended and renumbered to read:

57114. (a) Notwithstanding Section 56854 and Section 57089, for any proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, the commission shall forward the change of organization or reorganization for confirmation by the voters if the commission finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 25 percent of the number of landowners within any affected district within the affected territory who own at least 25 percent of the assessed value of land within the territory.

(B) At least 25 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 25 percent of the number of landowners within any affected district within the affected territory, owning at least 25 percent of the assessed value of land within the territory of that district.

(b) If a petition that meets the requirements of this section has been filed, the commission shall approve the proposal subject to confirmation by the voters of each district that has filed such a petition. The voter confirmation requirements set forth in subdivision (a) shall not apply to any proposal initiated by the commission under Section 56375 or where each affected district has consented to the proposal by a resolution adopted by a majority vote of its board of directors.

SEC. 250. Section 57100 of the Government Code is amended and renumbered to read:

57115. Any resolution of the commission forwarding a change of organization or a reorganization for confirmation by the voters shall, in addition to any applicable requirements contained in Sections 57100 to 57111, inclusive, do all of the following:

(a) Designate the affected territory within which the special election or elections shall be held.

(b) Provide for the question or questions to be submitted to the voters.

(c) Specify any terms or conditions provided for in the change of organization or reorganization.

(d) State the vote required for confirmation of the change of organization or reorganization.

SEC. 251. Section 57101 of the Government Code is amended and renumbered to read:

57116. In addition to any other requirements, any resolution of the commission ordering an incorporation subject to an election shall do all of the following:

(a) Provide for the election of the officers of the proposed city required to be elected, except as provided in Section 56727 and except as to officers designated as appointive, pursuant to Section 56723.

(b) Provide for the election on the question of whether members of the city council in future elections are to be elected by district or at large.

(c) If the petition so requests, state that the voters may express a preference as to whether or not the city shall operate under the city manager form of government, the ballot question being for or against the city manager form of government.

(d) If the petition so requests, state that the voters may express their preference between names for the new city.

SEC. 252. Section 57102 of the Government Code is amended and renumbered to read:

57117. In addition to any other requirements, any resolution of the commission ordering a consolidation of cities subject to an election shall do all of the following:

(a) Provide for the election of officers of the successor city required to be elected.

(b) State that the voters may express their preference as to the name of the successor city.

SEC. 253. Section 57103 of the Government Code is amended and renumbered to read:

57118. In any resolution ordering a change of organization or reorganization subject to the confirmation of the voters, the commission shall determine that an election will be held:

(a) Within the territory of each city or district ordered to be incorporated, formed, disincorporated, dissolved or consolidated.

(b) Within the entire territory of each district ordered to be merged with or established as a subsidiary district of a city, or both within the district and within the entire territory of the city outside the boundaries of the district.

(c) If the executive officer certifies a petition pursuant to Section 57108 or 57109, within the territory of the district ordered to be merged with or established as a subsidiary district of a city.

(d) Within the territory ordered to be annexed or detached.

(e) If ordered by the commission pursuant to Section 56876 or 56759, both within the territory ordered to be annexed or detached and within all or the part of the city or district which is outside of the territory.

(f) If the election is required by Section 57114, separately within the territory of each affected district that has filed a petition meeting the requirements of Section 57114.

SEC. 254. Section 57103.1 of the Government Code is amended and renumbered to read:

57119. Notwithstanding Section 57118, in any resolution ordering a special reorganization, the commission shall call an election in both of the following territories:

(a) The territory ordered to be detached from the city.

(b) The entire territory of the city from which the detachment is ordered to occur.

SEC. 255. Section 57104 of the Government Code is amended and renumbered to read:

57120. In addition to any other requirements, any resolution of the commission ordering an incorporation or a formation subject to an election shall provide for the establishment of the appropriations limit determined pursuant to Section 56811.

SEC. 256. Section 57125 of the Government Code is amended to read:

57125. Special elections called within all or any part of a city or registered-voter district shall be governed by the general election provisions and the local election provisions of the Elections Code, so far as they may be applicable, relating to the qualifications of voters, the manner of voting, the form of the ballot, the duties of precinct and

election officers, the canvassing of returns, and all other particulars. If the commission determines that there is any inconsistency:

(a) Between the general elections provisions and the local elections provisions of the Elections Code, the local elections provisions shall control.

(b) Between this division and the Elections Code, this division shall control.

SEC. 257. Section 57126 of the Government Code is amended to read:

57126. Special elections called within all or any part of a landowner-voter district shall be governed by the general elections provisions of the principal act, so far as they may be applicable, relating to the qualifications of voters, the manner of voting, the form of the ballot, the duties of precinct and election officers, the canvassing of returns, and all other particulars. To the extent of any inconsistency between the provisions of this division and the principal act as determined by the commission, the provisions of this division shall control.

SEC. 258. Section 57127 of the Government Code is amended to read:

57127. If the commission calls any special election within all or any part of any district, any references in the principal act to the board of directors of the district and to the clerk or secretary of the district shall be deemed to mean the commission and the executive officer, respectively.

SEC. 259. Section 57129 of the Government Code is amended to read:

57129. Where any records of a city or a district are required for the purpose of calling, holding, or conducting any special election called by the commission pursuant to this division, those records or certified copies of those records shall be delivered, upon request, to the elections official by the city or district officer having custody of the records or copies and shall be returned to that officer immediately after the canvass of the election returns. All other election records, documents, instruments, and election supplies, including, but not limited to, rosters, ballots, and tally sheets, shall be retained or disposed of by the elections official in the manner provided by law.

SEC. 260. Section 57130 of the Government Code is amended to read:

57130. The elections official shall cause notice of each change of organization or reorganization election to be given by publication, posting, and mailing as provided in Chapter 1 (commencing with Section 57025) of Part 4.

SEC. 260.5. Section 57131 of the Government Code is amended to read:

57131. The notice of election required to be given by Section 57130 shall contain all of the matters specified in Section 57115.

SEC. 261. Section 57133 of the Government Code is amended to read:

57133. The question or questions to be submitted at any special election or elections called pursuant to this part shall be in substantially the following form:

(a) For an incorporation: "Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of ____ County ordering the incorporation of the territory described in the order and designated in the order as ____ (insert the distinct short form designation previously assigned by the commission) be confirmed?"

(b) For an annexation: "Shall the order adopted on ____, 20 __, by the ____ (insert Local Agency Formation Commission) ordering the annexation to ____ (insert city or district) of the territory described in that order and designated as ____ (insert the short form designation previously assigned by the commission) be confirmed?"

(c) For a detachment: "Shall the order adopted on ____, 20 __, by the ____ (insert Local Agency Formation Commission) ordering the detachment from the ____ (insert city or district) of the territory described in the order and designated in the order as ____ (insert the short form designation previously assigned by the commission) be confirmed?"

(d) For a city consolidation: "Shall the order adopted on ____, 20 __, by the ____ (insert Local Agency Formation Commission) of the County of ____ (insert name of city) ordering the consolidation of the Cities of ____ (insert names of all cities ordered consolidated) into a single city known as the City of ____ be confirmed?"

(e) For a disincorporation: "Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of the County of ____ ordering the disincorporation of the City of ____ be confirmed?"

(f) For a reorganization: "Shall the order adopted on ____, 20 __, by the ____ (insert Local Agency Formation Commission) ordering a reorganization affecting the ____ (insert names of all affected cities or districts) and providing for ____ (insert list of all changes of organization or new cities proposed to be incorporated or districts to be formed) be confirmed?"

(g) For a district dissolution: "Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of the County of ____ ordering the dissolution of the ____ district be confirmed?"

(h) For a district consolidation: "Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of the County of ____

ordering the consolidation of ____ (insert the names of all districts ordered consolidated) into a single district known as the ____ District be confirmed?''

(i) For a merger: ''Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of the County of ____ ordering the merger of the ____ District with the City of ____ be confirmed?''

(j) For establishment of a subsidiary district: ''Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of the County of ____ ordering the ____ District established as a subsidiary district of the City of ____ be confirmed?''

(k) For a district formation, use form of question under principal act of district being formed. If none, use substantially the following form: ''Shall the order adopted on ____, 20 __, by the Local Agency Formation Commission of ____ County ordering the formation of a district in the territory described, known as ____, be approved?''

SEC. 262. Section 57138 of the Government Code is amended to read:

57138. If the commission orders both a merger and the establishment of a subsidiary district, questions on each matter shall be printed on the ballot, one above the other. Immediately preceding the first question, there shall be printed in the words ''Vote on both questions.''

SEC. 263. Section 57144 of the Government Code is amended to read:

57144. Within five days after a special election is called pursuant to this part, the executive officer shall submit to the commission, for its approval or modification, an impartial analysis of the proposed incorporation or change of organization.

The impartial analysis shall not exceed 500 words in length in addition to a general description of the boundaries of the territory affected.

The commission shall approve or modify the analysis and submit the analysis to the elections official no later than the last day for submission of rebuttal arguments.

Immediately below the impartial analysis there shall be printed in no less than 10-point bold type a legend substantially as follows:

''The above statement is an impartial analysis of Proposition ____. If you desire a copy of the proposition, please call the elections official's office at (insert telephone number) and a copy will be mailed at no cost to you.''

SEC. 264. Section 57145 of the Government Code is amended to read:

57145. (a) The legislative body of any affected agency, or any member or members of the legislative body of any affected agency authorized by it, or any individual voter or association of citizens entitled

to vote on the change of organization or reorganization, or any combination of those voters and association of citizens may file a written argument for, or a written argument against, the question to be submitted to the voters.

Arguments shall not exceed 300 words in length and shall be filed with the elections official no later than the last day for submission of arguments specified by Section 57146.

(b) If more than one argument for or more than one argument against the proposal is filed with the elections official within the time prescribed in Section 57145, the elections official shall select one of the arguments for printing and distribution to the voters.

In selecting the arguments, the elections official shall give preference and priority in the order named to the following arguments:

(1) The legislative body of an affected agency or any authorized member or members of the legislative body.

(2) Individual voters or association of citizens or a combination of voters and associations.

SEC. 265. Section 57146 of the Government Code is amended to read:

57146. (a) On the basis of the time reasonably necessary to prepare and print the arguments, analysis, and sample ballots for the election, the elections official shall fix and determine a reasonable date prior to the election after which no arguments for or against the measure may be submitted for printing and distribution to the voters. Notice of the date fixed shall be published in accordance with Section 56153 in a newspaper of general circulation which is circulated in the affected territory. Arguments may be changed until and including the date fixed by the elections official.

(b) The notice shall contain all of the following information:

(1) A statement of the proposition to be voted on and a general description of the boundaries of the affected territory.

(2) An invitation to any registered voter or association of citizens entitled to vote on the proposal to submit and file with the elections official for printing and distribution in the ballot pamphlet, an argument for or an argument against the proposal.

(3) The date of the election.

(4) A statement that only one argument for and one argument against will be selected and printed in the ballot pamphlet.

(5) A statement that arguments shall not exceed 300 words in length and shall be accompanied by not more than five signatures.

SEC. 266. Section 57148 of the Government Code is amended to read:

57148. (a) The elections official shall cause a ballot pamphlet concerning the proposal to be printed and mailed to each voter entitled to vote on the question.

The ballot pamphlet shall contain all of the following information in the order prescribed:

(1) The impartial analysis of the proposition prepared by the commission.

(2) One argument for the proposal, if any.

(3) One rebuttal to the argument for the proposal, if any.

(4) One argument against the proposal, if any.

(5) One rebuttal to the argument against the proposal, if any.

A copy of the complete text of the proposition shall be made available by the elections official, to any voter upon request.

(b) The elections official shall mail a ballot pamphlet to each voter entitled to vote in the election at least 10 days prior to the date of the election. The ballot pamphlet is ''official matter'' within the meaning of Section 13303 of the Elections Code.

SEC. 267. Section 57149 of the Government Code is amended to read:

57149. The canvass of ballots cast at any election held pursuant to this division shall be conducted pursuant to Sections 15300 to 15309, inclusive, of the Elections Code. The elections official shall immediately, upon the completion of any canvass, report the results to the executive officer of the local agency formation commission.

SEC. 268. Section 57150 of the Government Code is amended to read:

57150. All proper expenses incurred in conducting elections for a change of organization or reorganization pursuant to this chapter shall be paid, unless otherwise provided by agreement between the commission and the proponents, as follows:

(a) In the case of annexation or detachment proceedings, by the local agency to or from which territory is annexed, or from which territory is detached, or was proposed to be annexed or detached.

(b) In the case of incorporation or formation proceedings, by the newly incorporated city or the newly formed district, if successful, or by the county within which the proposed city or district is located if the incorporation proceedings are terminated. In the case of a separate election for city officers held following the election for incorporation pursuant to Section 56825.5, by the newly incorporated city.

(c) In the case of disincorporation or dissolution proceedings, from the remaining assets of the disincorporated city or dissolved district or by the city proposed to be disincorporated or the district proposed to be dissolved if disincorporation or dissolution proceedings are terminated.

(d) In the case of consolidation proceedings, by the successor city or district or by the local agencies proposed to be consolidated, to be paid by those local agencies in proportion to their respective assessed values, if proceedings are terminated.

(e) In the case of a reorganization:

(1) If the reorganization is ordered, by the affected local agencies or successor local agencies, as the case may be, for any of the above-enumerated changes of organization which may be included in the particular reorganization, to be paid by those local agencies in proportion to their assessed value.

(2) If the reorganization proceedings are terminated or the proposal is defeated, by the county within which the city is located.

SEC. 269. Section 57175 of the Government Code is repealed.

SEC. 270. Section 57176 of the Government Code is amended to read:

57176. The commission shall execute, within 30 days of the canvass of the election, a certificate of completion confirming the order of the change of organization or reorganization if a majority of votes cast upon the question are in favor of the change of organization or reorganization in any of the following circumstances:

(a) At an election called in the territory ordered to be organized or reorganized.

(b) At an election called within the territory ordered to be organized or reorganized and within the territory of the affected agency.

(c) At both an election called within the area to be organized or reorganized and an election called within the territory of an affected city, when required by the commission pursuant to Section 56759.

SEC. 271. Section 57176.1 of the Government Code is amended to read:

57176.1. Notwithstanding Section 57176, the commission shall execute, within 30 days of the canvass of the election, a certificate of completion confirming a special reorganization if a majority of votes cast upon the question are in favor of the special reorganization in both of the following circumstances:

(a) An election called in the territory ordered to be detached from the city.

(b) An election called in the entire territory of the city from which the detachment is ordered to occur.

SEC. 272. Section 57177 of the Government Code is amended to read:

57177. The commission shall execute a certificate of completion confirming either the order of a merger or the order for the establishment of a subsidiary district in the following manner:

(a) Where the question submitted to the voters was only upon merger or only upon establishment of a subsidiary district, the commission shall execute a certificate of completion confirming the order if a majority of the votes cast on the question favored the order either:

(1) At an election called only within the district.

(2) At each election, where one election was called within the district and another election was called within the territory of the city outside the boundaries of the district.

(b) Where both the question of merger and the question of establishment of a subsidiary district were submitted to the voters within the district only and both questions were favored by a majority of the voters, the commission shall order that change of organization favored by the greater number of voters. Where the number of votes was the same on both questions, the merger shall be ordered.

(c) Where both the question of merger and the question of establishment of a subsidiary district were submitted at an election called both within the district and at an election within the territory of the city outside the district boundaries, and both questions were favored by a majority of the voters in both areas, that change of organization receiving the greater number of votes in both elections shall be completed. Where the number of votes was the same, or where the question of merger received the greater number of votes in one of the elections, a merger shall be completed.

SEC. 273. Section 57177.5 of the Government Code is amended to read:

57177.5. In the case of elections on an order of consolidation of cities or districts, the commission shall take one of the following actions:

(a) Execute a certificate of completion confirming the order of consolidation if, within the territory of each city or district ordered to be consolidated, a majority of the votes cast on the question favored the consolidation.

(b) Execute a certificate of completion terminating proceedings if, in one of the cities or districts ordered to be consolidated, the votes cast in favor of consolidation did not constitute a majority.

SEC. 274. Section 57178 of the Government Code is amended to read:

57178. In addition to any other requirements, the certificate of completion confirming an order of incorporation or consolidation of cities shall do all of the following:

(a) Give the name of the new or successor city favored by the electors.

(b) Declare the persons receiving the highest number of votes for the several offices of the new or successor city to be elected to those offices. If the incorporation applicant requested that the first election for city officers was to occur after the election on the proposal which included

incorporation, the resolution shall call an election at which city officers shall be elected.

(c) In the case of an incorporation, declare which system of electing council members was favored, that is, election by district or election at large; and declare whether the city manager form of government was favored by the electors.

SEC. 275. Section 57179 of the Government Code is amended to read:

57179. If the majority of the votes cast is against the change of organization or reorganization, the commission shall execute a certificate of termination proceedings.

SEC. 276. Section 57200 of the Government Code is amended to read:

57200. (a) Immediately after completion of proceedings ordering a change of organization or reorganization without election or confirming an order for a change of organization or reorganization after confirmation by the voters, the executive officer shall prepare and execute a certificate of completion and shall make the filings required by this division.

(b) Whenever the commission approves the inclusion of any territory of a landscape and lighting assessment district within a city, the executive officer shall notify the clerk of the landscape and lighting assessment district or other person designated by the district to receive notification.

SEC. 277. Section 57201 of the Government Code is amended to read:

57201. The certificate of completion prepared and executed by the executive officer shall contain all of the following information:

(a) The name of each newly incorporated city, each new district, and the name of each existing local agency for which a change of organization or reorganization was ordered and the name of the county within which any new or existing local agencies are located.

(b) A statement of each type of change of organization or reorganization ordered.

(c) A description of the boundaries of the new city ordered incorporated, the new district ordered formed or of any territory affected by the change of organization or reorganization, which description may be made by reference to a map and legal description showing the boundaries attached to the certificate.

(d) Any terms and conditions of the change of organization or reorganization. The terms and conditions shall provide public utilities, as defined in Section 216 of the Public Utilities Code, 90 days following the recording of the certificate of completion to make the necessary changes to impacted utility customer accounts.

SEC. 278. Section 57302 of the Government Code is amended to read:

57302. The general provisions of this part shall apply only if, and to the extent that, the terms and conditions of any change of organization or reorganization do not make specific provision for any of the matters referred to in this part. If a change of organization or a reorganization specifically provides for, and is made subject to any of, the terms and conditions authorized by Section 56886, the specific terms and conditions shall control over the general provisions of this part. Any of those terms and conditions may be provided for, and be made applicable to, any affected county, affected city, or affected district, to all or any part of the territory of the county, city, or district, to any territory proposed to be annexed to the county, city, or district and to the owner or owners of property within that territory.

SEC. 279. Section 57303 of the Government Code is amended to read:

57303. If no determination is made pursuant to subdivision (d) of Section 56886, the principal amount of bonded indebtedness which may be incurred or assumed by any city, county, or district, under any statute or charter provision imposing a limitation on bonded indebtedness, shall not be affected by any change of organization or reorganization.

SEC. 280. Section 57379 of the Government Code is amended to read:

57379. If the first general municipal election following an incorporation election will occur less than one year after the effective date of incorporation, or occurred on or after November 1, 1987, and less than one year after the incorporation election, of the five elected members of the city council, the three receiving the lowest number of votes shall hold office until the second general municipal election following the incorporation election and until their successors are elected and qualified, and the two receiving the highest number of votes shall hold office until the third general municipal election following the incorporation election and until their successors are elected and qualified.

The first general municipal election following the incorporation election shall not be held unless either a proposition is to be voted upon or offices other than city council member offices are to be filled.

In the event that, pursuant to Section 56727, the first election for city council members was held after the election on the incorporation proposal, the term ''incorporation election'' in this section means the first election for city council members.

SEC. 281. Section 57384 of the Government Code is amended to read:

57384. (a) Except as provided in subdivision (b), whenever a city has been incorporated from territory formerly unincorporated, the board of supervisors shall continue to furnish, without additional charge, to the area incorporated all services furnished to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation became effective or until the city council requests discontinuance of the services, whichever occurs first.

(b) This subdivision applies only to incorporations for which the petition or resolution of application for incorporation is filed with the commission on or after January 1, 1987. Prior to the commission adopting a resolution making determinations, the board of supervisors may request that the city reimburse the county for the net cost of services provided pursuant to subdivision (a). The commission shall impose this requirement as a term and condition of its resolution. The city shall be obligated to reimburse the county within five years of the effective date of the incorporation or for a period in excess of five years, if the board of supervisors agrees to a longer period. As used in this subdivision, ''net cost of services'' means the total direct and indirect expense to the county of providing services, as determined pursuant to paragraph (2) of subdivision (c) of Section 56810, adjusted by any subsequent change in the California Consumer Price Index, less any revenues which the county retains that were generated from the formerly unincorporated territory during the period of time the services are furnished pursuant to subdivision (a). This subdivision applies only to those services which are to be assumed by the city.

(c) At the request of the city council, the board of supervisors, by resolution, may determine to furnish, without charge, to the area incorporated all or a portion of services furnished to the area prior to the incorporation for an additional period of time after the end of the fiscal year during which the incorporation became effective. The additional period of time after the end of the fiscal year during which the incorporation became effective for which the board of supervisors determines to provide services, without charge, and the specific services to be provided shall be specifically stated in the resolution adopted by the board of supervisors.

SEC. 282. Section 57402 of the Government Code is amended to read:

57402. After ascertaining that disincorporation has carried, the commission shall determine and certify in a written statement to the board of supervisors the indebtedness of the city, the amount of money in its treasury, and the amount of any tax levy or other obligation due the city which is unpaid or has not been collected.

SEC. 283. Section 57404 of the Government Code is amended to read:

57404. If the commission does not provide the board of supervisors with the certified statement required by Section 57402, the board shall make the determinations provided for in that section.

SEC. 285. Section 99 of the Revenue and Taxation Code is amended to read:

99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1, or the annual tax increment determined pursuant to Section 96.5, for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code and the adjustments in tax revenues that may occur pursuant to Section 56815 of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 56810 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

(3) In the case of a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code to the district and shall make the adjustment as determined by Section 56810 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the formation.

(b) Upon the filing of an application or a resolution pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory that is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to each local agency pursuant to Section 96.1 and Section 96.5.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. This negotiation period shall not exceed 60 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues. Prior to entering into negotiation on behalf of a district for the exchange of property tax revenue, the board shall consult with the affected district. The consultation shall include, at a minimum, notification to each member and executive officer of the district board of the pending consultation and provision of adequate opportunity to comment on the negotiation.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56658 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the 60-day negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 15 days for the affected agencies, pursuant to paragraph (4) to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in

paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 15-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) In the case of a jurisdictional change that consists of a city's qualified annexation of unincorporated territory, an exchange of property tax revenues between the city and the county shall be determined in accordance with subdivision (e) if that exchange of revenues is not otherwise determined pursuant to either of the following:

(A) Negotiations completed within the applicable period or periods as prescribed by this subdivision.

(B) A master property tax exchange agreement among those local agencies, as described in subdivision (d).

For purposes of this paragraph, a qualified annexation of unincorporated territory means an annexation, as so described, for which proceedings before the relevant local agency formation commission are initiated, as provided in Section 56651 of the Government Code, on or after January 1, 1998, and on or before January 1, 2005.

(9) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4) and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among the local agencies. Notwithstanding any other provision of law, no such jurisdictional change shall become effective until each county and city included in these negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will

be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a). Adjustments in property tax allocations made as the result of a city or library district withdrawing from a county free library system pursuant to Section 19116 of the Education Code shall be made pursuant to Section 19116 of the Education Code, and this subdivision shall not apply.

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) (1) An exchange of property tax revenues that is required by paragraph (8) of subdivision (b) to be determined pursuant to this subdivision shall be determined in accordance with all of the following:

(A) The city and the county shall mutually select a third-party consultant to perform a comprehensive, independent fiscal analysis, funded in equal portions by the city and the county, that specifies estimates of all tax revenues that will be derived from the annexed territory and the costs of city and county services with respect to the annexed territory. The analysis shall be completed within a period not to exceed 30 days, and shall be based upon the general plan or adopted plans and policies of the annexing city and the intended uses for the annexed territory. If, upon the completion of the analysis period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (B) shall apply.

(B) The city and the county shall mutually select a mediator, funded in equal portions by those agencies, to perform mediation for a period of not to exceed 30 days. If, upon the completion of the mediation period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (C) shall apply.

(C) The city and the county shall mutually select an arbitrator, funded in equal portions by those agencies, to conduct an advisory arbitration with the city and the county for a period of not to exceed 30 days. At the conclusion of this arbitration period, the city and the county shall each present to the arbitrator its last and best offer with respect to the exchange of property tax revenues. The arbitrator shall select one of the offers and recommend that offer to the governing bodies of the city and the county. If the governing body of the city or the county rejects the recommended offer, it shall do so during a public hearing, and shall, at the conclusion

of that hearing, make written findings of fact as to why the recommended offer was not accepted.

(2) Proceedings under this subdivision shall be concluded no more than 150 days after the auditor provides the notification pursuant to paragraph (3) of subdivision (b), unless one of the periods specified in this subdivision is extended by the mutual agreement of the city and the county. Notwithstanding any other provision of law, except for those conditions that are necessary to implement an exchange of property tax revenues determined pursuant to this subdivision, the local agency formation commission shall not impose any fiscal conditions upon a city's qualified annexation of unincorporated territory that is subject to this subdivision.

(f) Except as otherwise provided in subdivision (g), for the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter for those local agencies that were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979. The local agencies shall determine by resolution the amount of property tax revenues to be exchanged between and among the affected agencies and notify the auditor of the determination.

(g) For the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter, for a city incorporation that was filed pursuant to Sections 54900 to 54904 after January 1, 1978, but on or before January 1, 1979, the amount of property tax revenue considered to have been received by the jurisdiction for the 1978–79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to the incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978–79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the 1977–78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax revenue projected for that incorporation, the commission shall by October 10, determine pursuant to Section 54790.3 of the Government Code the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and each fiscal year thereafter for incorporations approved by the voters in June 1979.

(h) For the purpose of the computations made pursuant to this section, in the case of a district formation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1, 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year

thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(i) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by the jurisdictional change, as determined as follows:

(1) The governing body of each district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax revenues to be exchanged between and among the affected jurisdictions. This determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that the affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(j) For purposes of subdivision (i), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall negotiate the amount, if any, of property tax revenues to be exchanged. In these negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to the annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in the cost of living, or per capita personal income,

whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

(k) At any time after a jurisdictional change is effective, any of the local agencies party to the agreement to exchange property tax revenue may renegotiate the agreement with respect to the current fiscal year or subsequent fiscal years, subject to approval by all local agencies affected by the renegotiation.

SEC. 286. This act is intended to implement the recommendations of the Commission on Local Governance for the 21st Century, as transmitted to the Legislature on January 20, 2000.

SEC. 287. Sections 90.5, 97.5, 115.5, and 211.5 of this bill incorporate amendments to Sections 56828, 56833.1, 56840, and 56857 of the Government Code proposed by both this bill and AB 1495, which sections are renumbered respectively as Sections 56658, 56666, 56800, and 56895 of the Government Code in this bill, and Sections 214.5 and 223.5 of this bill also incorporate amendments to Sections 57002 and 57050 of the Government Code proposed by both this bill and AB 1495. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends or repeals Sections 56828, 56833.1, 56840, 56857, 57002, and 57050 of the Government Code, and (3) this bill is enacted after AB 1495, in which case Sections 56828, 56833.1, 56840, 56857, 57002, and 57050 of the Government Code, as amended by AB 1495, shall remain operative only until the operative date of this bill, at which time Sections 90.5, 97.5, 115.5, 211.5, 214.5, and 223.5 of this bill shall become operative, and Sections 90, 97, 115, 214, and 223 of this bill and Section 56895 of the Government Code, as added by Section 211 of this bill, shall not become operative.

SEC. 288. (a) Section 123.5 of this bill incorporates amendments to Section 56845 of the Government Code proposed by both this bill and AB 1495, which section is renumbered as Section 56815 of the Government Code in this bill. Section 123.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends or repeals Section 56845 of the Government Code, (3) AB 2779 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1495, in which case Section 56815 of the Government Code, as added by Section 123 of this bill, and Section 123.7 of this bill shall not become operative.

(b) Section 123.7 of this bill incorporates amendments to Section 56845 of the Government Code proposed by both this bill and AB 2779. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill enacted amends or repeals Section 56845 of the Government Code, (3) AB 1495 is not

enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2779, in which case Section 56815 of the Government Code, as added by Section 123 of this bill, and Section 123.5 of this bill shall not become operative.

(c) Section 123.7 of this bill also incorporates amendments to Section 56845 of the Government Code proposed by this bill, AB 1495, and AB 2779. It shall also become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend or repeal Section 56845 of the Government Code, and (3) this bill is enacted after AB 1495 and AB 2779, in which case Section 56815 of the Government Code, as added by Section 123 of this bill, and Section 123.5 of this bill shall not become operative.

SEC. 289. 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 762

An act to add Section 56852.7 to the Government Code, relating to local government reorganization.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 56852.7 is added to the Government Code, to read:

56852.7. If the commission approves a proposal for a special reorganization that includes the incorporation of a city with a population of more than 1,000,000, the commission shall do both of the following:

(a) Specify in the resolution making determinations that, notwithstanding Section 36501, the legislative body of the city shall consist of an even number of members, with at least 12 elected by districts, as defined in Section 34871. The commission shall establish the initial boundaries of a sufficient number of districts of approximately equal populations, consistent with state and federal law, not to exceed more than 100,000 residents per district.

(b) Specify in the resolution that the mayor, who shall be a voting member of the council, shall be elected on a citywide basis.

CHAPTER 763

An act to amend Section 4420 of the Government Code, relating to state property.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The Director of General Services, with approval of the Director of the Department of Transportation, may sell, lease, or exchange the real property located at 120 South Spring Street in the City of Los Angeles, including structures thereon totaling approximately 395,000 square feet, on those terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state.

SEC. 2. Section 4420 of the Government Code is amended to read:

4420. (a) No state or local governmental agency and no person acting on behalf of any state or local governmental agency, except a governmental agency created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract that is about to be or that has been competitively bid, require the bidder to make application to, furnish financial data to, or obtain or procure any surety bond or contract of insurance specified in connection with the contract or specified by any law, ordinance, or regulation from, a particular surety or insurance company, agent, or broker.

(b) Notwithstanding subdivision (a), a state or local governmental agency may use owner-controlled or wrap-up insurance with regard to a construction or renovation program for which the total cost exceeds fifty million dollars ($50,000,000) if the agency meets all of the following conditions and certifies that it has made the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(3) The program maintains completed operation coverage for a term for which the Insurance Commissioner has determined that coverage is reasonably commercially available, but in no event less than three years.

(4) Bid specifications clearly specify for all bidders the insurance coverage provided under the program and minimum safety requirements that must be met.

(5) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor or subcontractor believes is necessary to protect from any liability arising out of the contract.

(6) The program does not include surety insurance.

(c) Safety requirements for a project subject to this section may be developed jointly between the agency and the prime contractor. If the agency requires a safety program different than the prime contractor's usual and customary program, the program shall be mutually agreed upon, taking into account the prime contractor's experience, expertise, existing labor agreements relating to safety issues, and any unique safety issues relating to the project.

(d) This section shall not affect any provision in a collective bargaining agreement specified in Section 3201.5 of the Labor Code that is submitted by the prime contractor with its construction bid.

(e) The use of owner-controlled or wrap-up insurance under this chapter does not abrogate, limit, or otherwise affect any potential liability that is otherwise available at law.

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

(1) ''Owner-controlled or wrap-up insurance'' means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(2) ''State governmental agency'' means any state office, officer, department, division, bureau, board, commission, the University of California, or the California State University.

(3) ''Local governmental agency'' means any city, county, city and county, special district, authority, or other political subdivision of or within the state.

CHAPTER 764

An act to add and repeal Title 7.55 (commencing with Section 67150) of the Government Code, relating to public agencies.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Title 7.55 (commencing with Section 67150) is added to the Government Code, to read:

TITLE 7.55. SAN DIEGO REGIONAL GOVERNMENT EFFICIENCY COMMISSION

67150. This title shall be known and may be cited as the San Diego Regional Government Efficiency Commission Act.

67150.1. (a) The Legislature finds and declares all of the following:

(1) The Legislature has established several separate limited-purpose agencies in the San Diego region.

(2) The San Diego region's residents strongly support efforts to protect and enhance our quality of life, the environment, sustained economic development, and efforts to ensure the equitable distribution of the costs and benefits of environmental protection and economic development.

(3) The problems facing the San Diego region include linking land use to transportation and the increasing congestion of airports, ports, and surface transportation routes caused by growth in the transportation of freight, goods, passengers, and commuters.

(4) The opportunity facing the San Diego region is the ability of federal, state, regional, and local agencies to cooperate on solutions.

(b) Accordingly, the Legislature further finds and declares that there is a need to improve coordination or restructure the governance of regional agencies within the San Diego region by January 1, 2003, so as to improve those agencies' authority, efficiency, and accountability.

(c) Therefore, it is the intent of the Legislature in enacting this title to create a regional government efficiency commission to make recommendations to the Legislature regarding these problems, challenges, and opportunities. It is the intent of the Legislature that the commission have the task of developing a plan for the coordinated

governance of regional agencies, and to submit that plan for adoption by the Legislature.

67150.2. There is hereby created the San Diego Regional Government Efficiency Commission, which consists of 11 members, as follows:

(a) The Chair of the Joint Agency Negotiating Team on Consolidation, who shall also chair the commission.

(b) The Chair of the Board of Directors of the San Diego Association of Governments, unless that board, by majority vote, appoints another person from among that board's members.

(c) The Chair of the San Diego Metropolitan Transit Development Board, unless that board, by majority vote, appoints another person from among that board's members.

(d) The Chair of the North San Diego County Transit Development Board, unless that board, by majority vote, appoints another person from among that board's members.

(e) The Chair of the Board of Commissioners of the San Diego Unified Port District, unless that board, by majority vote, appoints another person from among that board's members.

(f) The member of the legislative body authorized to govern the infrastructure financing district in the border development zone whose supervisorial district includes the San Ysidro and Otay Mesa border crossings.

(g) Five persons who are residents of the San Diego region, appointed by the Governor. The Legislature encourages the Governor to appoint persons who are broadly representative of the diversity of the residents of the San Diego region.

67150.3. (a) On or before August 1, 2001, the commission shall submit to the Legislature both of the following:

(1) A plan and draft legislation for the consolidation of regional agencies within the San Diego region.

(2) A plan and draft legislation to improve coordination of regional agencies within the San Diego region.

(b) The commission's plan and draft legislation shall accomplish the Legislature's intent as set forth in Section 67150.1.

(c) To the extent it determines it to be necessary, the commission may prepare appropriate ballot propositions for individual jurisdictions.

(d) The commission may evaluate specific land use authority alternatives in order to meet transportation goals as defined by the commission.

(e) The commission may evaluate the consolidation of other regional agencies and functions.

(f) Legislation implementing the commission's plan shall not become operative unless a ballot proposition containing that proposal is

approved by a majority of the votes cast by the voters voting on that proposition at an election that shall be conducted by the County of San Diego in the San Diego region in either March 2002, or November 2002. The County of San Diego shall conduct that election in substantial compliance with the state laws pertaining to county referendum elections. If that proposition is approved by a majority of the votes cast at an election conducted in March 2002, the operative date of the legislation shall be July 1, 2002. If that proposition is approved by a majority of the votes cast at an election conducted in November 2002, the operative date of the legislation shall be January 1, 2003.

67150.4. (a) It is the intent of the Legislature that all state agencies, boards, and commissions, including, but not limited to, the California State University and the University of California, shall cooperate with the commission in carrying out its purposes. Further, it is the intent of the Legislature that the Regents of the University of California provide the commission with a venue to carry out its purposes at the University of California, San Diego.

(b) All legislative committees, agencies, and offices shall cooperate with the commission in carrying out its purposes.

(c) A majority of the commission shall constitute a quorum for the transaction of business.

(d) A recorded vote of a majority of the total membership of the commission is required for any action, including, but not limited to, the selection of staff and other support services.

(e) Meetings of the commission are subject to the Bagley-Keene Open Meeting Act (Chapter 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(f) The commission is subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)). The commission is a state agency, as defined in Section 82049.

(g) No member of the commission, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the commission, any committee or subcommittee thereof, any present member of the commission, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing the commission's action.

67150.5. As used in this title, ''San Diego region'' means the territory located within the boundaries of the County of San Diego.

67150.6. (a) This title shall remain in effect only until the effective date of the legislation implementing the commission's plan and on that date this title is repealed.

(b) The Secretary of State shall identify the effective date of the implementing legislation described in subdivision (a).

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 765

An act to amend Section 27388 of the Government Code, relating to real estate fraud.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 27388 of the Government Code is amended to read:

27388. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars ($2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except those expressly exempted from payment of recording fees. ''Real estate instrument'' is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. ''Real estate instrument'' does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, nor any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this section, shall be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund. The amount deducted for administrative costs shall not exceed 10 percent of the fees paid pursuant to this section.

(b) Money placed in the Real Estate Fraud Prosecution Trust Fund shall be expended to fund programs to enhance the capacity of local

police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (a), 60 percent of the funds shall be distributed to district attorneys subject to review pursuant to subdivision (d), and 40 percent of the funds shall be distributed to local law enforcement agencies within the county in accordance with subdivision (c). In those counties where the investigation of real estate fraud is done exclusively by the district attorney, after deduction of the actual and necessary administrative costs referred to in subdivision (a), 100 percent of the funds shall be distributed to the district attorney, subject to review pursuant to subdivision (d). The funds so distributed shall be expended for the exclusive purpose of deterring, investigating, and prosecuting real estate fraud crimes.

(c) The county auditor or director of finance shall distribute funds in the Real Estate Fraud Prosecution Trust Fund to eligible law enforcement agencies within the county pursuant to subdivision (b), as determined by a Real Estate Fraud Prosecution Trust Fund Committee composed of the district attorney, the county chief administrative officer, and the chief officer responsible for consumer protection within the county, each of whom may appoint representatives of their offices to serve on the committee. If a county lacks a chief officer responsible for consumer protection, the county board of supervisors may appoint an appropriate representative to serve on the committee. The committee shall establish and publish deadlines and written procedures for local law enforcement agencies within the county to apply for the use of funds and shall review applications and make determinations by majority vote as to the award of funds using the following criteria:

(1) Each law enforcement agency that seeks funds shall submit a written application to the committee setting forth in detail the agency's proposed use of the funds.

(2) In order to qualify for receipt of funds, each law enforcement agency submitting an application shall provide written evidence that the agency either:

(A) Has a unit, division, or section devoted to the investigation or prosecution of real estate fraud, or both, and the unit, division, or section has been in existence for at least one year prior to the application date.

(B) Has on a regular basis, during the three years immediately preceding the application date, accepted for investigation or prosecution, or both, and assigned to specific persons employed by the agency, cases of suspected real estate fraud, and actively investigated and prosecuted those cases.

(3) The committee's determination to award funds to a law enforcement agency shall be based on, but not be limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number

of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; and (D) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, or corporations, as a result of the real estate fraud cases filed, and those under active investigation by that law enforcement agency.

(4) Each law enforcement agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3), shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include (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) the number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds; and (D) other relevant information the committee may reasonably require.

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board detailing both:

(1) Facts, based upon, but not limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; (D) the number of convictions obtained in the prior year; and (E) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include (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) the number of filed complaints, investigations, prosecutions, and convictions that resulted from the expenditure of funds; and (D) other relevant information provided at the discretion of the district attorney.

(e) The intent of the Legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, an emphasis should be placed on fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the prosecutor.

(f) A district attorney's office or a local enforcement agency that has undertaken investigations and prosecutions that will continue into a subsequent program year may receive nonexpended funds from the previous fiscal year subsequent to the annual submission of information detailing the accounting of funds received and expended in the prior year.

(g) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds. Funds from the Real Estate Fraud Prosecution Trust Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

CHAPTER 766

An act to add Section 33333.5 to the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 33333.5 is added to the Health and Safety Code, to read:

33333.5. (a) With respect to the adoption of the redevelopment plan for an area of the City of South Gate with the approximate boundaries east of Atlantic Boulevard, south of Wood Avenue, north of Aldrich Road, and west of the Los Angeles River, the agency shall be exempt from the provisions of Sections 33322 to 33327, inclusive, and Section 33330 related to the addition of new territory to existing project areas.

(b) Notwithstanding any other exemption granted by this section, the City of South Gate shall, prior to adoption of a redevelopment plan, conduct at least two public meetings on the proposed plan for South Gate residents and property owners. The City of South Gate shall also cause to be organized a citizens' advisory committee comprised of residents and property owners of the project, which shall advise the agency on development strategy and plans and other matters that may affect the residents of the project area. The citizens' advisory committee shall remain in existence for at least three years.

(c) The adoption of a redevelopment plan pursuant to this section is limited to a plan that adds land into an existing redevelopment plan and does not involve a change of any general plan or zoning ordinance or

grant any variance. Any change in zoning, a general plan, or a variance relating to the additional redevelopment plan area shall be subject to all applicable requirements of law.

(d) Nothing in this section shall preclude the City of South Gate or its redevelopment agency from using a prior environmental impact report prepared for the site, referenced in subdivision (a), pursuant to Section 15153 of Title 14 of the California Code of Regulations.

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.

SEC. 3. Due to unique facts and circumstances applicable to the area of the City of South Gate described in Section 33459.9 of the Health and Safety Code, 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. Therefore, special legislation contained in Section 1 of this act is necessarily applicable only to the City of South Gate.

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:

The area described in this act requires remediation from hazardous substances, and it is both economically and physically blighted. It is essential for the City of South Gate to be exempted from statutory requirements that could interfere with the vitally necessary adoption of its redevelopment plan at the earliest possible time. To ensure the adoption of the redevelopment plan at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 767

An act to amend Section 20175 of the Public Contract Code, relating to public works contracts.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 20175 of the Public Contract Code is amended to read:

20175. (a) This section provides an alternative and optional procedure on bidding on building construction projects applicable only in the City of West Sacramento and the City of Davis, upon the approval of the city council of the respective city.

(b) (1) If the city council elects to proceed under this section, it shall, before entering into any contract requiring advertising for bids for a project, cause to be prepared estimates, and prepare documents, for the solicitation of bids on a design-and-build basis.

(2) For the purposes of this section, ''design and build'' means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

(c) The request for submittals shall include all of the following:

(1) A clear and precise description of the services to be provided and work to be performed.

(2) A description of the format that submittals shall follow and the elements they shall contain, including the qualifications and relevant experience of the design professional and the contractor, and the criteria that shall be used in evaluating the submittal, including the bid price.

(3) The date on which the submittals are due, and the timetable that will be used in reviewing and evaluating the submittals.

(d) In addition to the information required in paragraph (2) of subdivision (c), bidders shall submit their proposals with the construction bid price and all cost information in a separate sealed envelope.

(e) All submittals received prior to the closing time stated in the request for submittal shall be reviewed to determine those that meet the format requirements and the standards specified in the request for submittal.

(f) The contract shall be awarded to the lowest responsible bidder meeting the design, aesthetic, and quality standards of the city council. The formal bid request, issued by the city, shall contain a general statement describing the design and quality standards of the city for the specific project.

(g) For the purposes of this section, selections of design professionals shall meet the standards of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(h) The City of West Sacramento or the City of Davis, if it chooses to utilize this section, shall file, on or before September 1, 2000, and again on or before September 1, 2002, with the Committees on Local

Government of the Senate and the Assembly, a report containing the following information:

(1) A description of each project procured through the design-and-build process authorized by this section including, but not limited to, all of the following:

(A) The type of facility.

(B) The gross square footage of the facility.

(C) The company or contractor who was awarded the project.

(D) The estimated and actual length of time to complete the project.

(E) The estimated and actual project cost.

(F) A description of the relative merits of projects authorized pursuant to this section and similar projects procured pursuant to existing requirements of this code.

(G) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of projects pursuant to this section, including the resolution of the project.

(2) Other pertinent information that the city believes is instructive in evaluating whether the method of procurement should be continued or expanded, or both.

(i) This section is applicable only to any project for which the costs specified in any contract awarded pursuant to this section do not exceed fifty million dollars ($50,000,000).

(j) Contracts awarded pursuant to this section are valid until the project is completed, within the period specified in the contract entered into by the city prior to January 1, 2003.

(k) This section is applicable only to a project that is under the supervision of a licensed general building contractor within the meaning of Section 7057 of the Business and Professions Code.

(*l*) This section does not limit any existing authority, whether explicit or implied, for cities to utilize design-build in contracting for public improvements.

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

CHAPTER 768

An act to amend Sections 55523, 55722.5, 55882, 55901, 55922, 56133.5, 56382.5, 56621, 56631, and 56652 of the Food and Agricultural Code, relating to agricultural licensing.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 55523 of the Food and Agricultural Code is amended to read:

55523. (a) Each application shall state all of the following:

(1) The full name of the applicant.

(2) If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation.

(3) The principal business address of the applicant in this state.

(4) The name of every person who is authorized to receive and accept service of summons for the applicant.

(5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(6) A notice signed by the applicant or the applicant's representative that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete the application within 60 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

SEC. 2. Section 55722.5 of the Food and Agricultural Code is amended to read:

55722.5. (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall be accompanied by two copies of all documents in the complainant's

possession that are relevant to establishing the complaint, a filing fee of sixty dollars ($60), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under either the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.

(b) The respondent served shall answer within 30 calendar days of service. The respondent's response shall include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars ($300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers in accordance with standard procedures promulgated by the American Arbitration Association or other acceptable alternative dispute resolution entities.

(2) The hearing officers shall be familiar with the type of issues presented by such claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars ($1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent are charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

SEC. 3. Section 55882 of the Food and Agricultural Code is amended to read:

55882. It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Chapter 3, (commencing with Section 65500), Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Chapter 9.5 (commencing with Section 71000), Article 6 (commencing with Section 72101) of Chapter 10, Chapter 12.6 (commencing with Section 74701), Chapter 12.7 (commencing with Section 74801), Article 6 (commencing with Section 75131) of Chapter 13, Article 8 (commencing with Section 75631) of Chapter 13.5, Article 6 (commencing with Section 76141) of Chapter 14, Chapter 15 (commencing with Section 76201), Chapter 16.5 (commencing with Section 77001), Chapter 17 (commencing with Section 77201), Chapter 17.5 (commencing with Section 77401), Chapter 19 (commencing with Section 77701), Chapter 20 (commencing with Section 77901), Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

SEC. 4. Section 55901 of the Food and Agricultural Code is amended to read:

55901. (a) Except as specified in Section 55902, any misdemeanor which is prescribed by this article is punishable by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover

investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall adopt regulations to implement this subdivision by June 1, 2002.

SEC. 4.5. Section 55901 of the Food and Agricultural Code is amended to read:

55901. (a) Except as specified in Section 55902, any misdemeanor which is prescribed by this article is punishable by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 5. Section 55922 of the Food and Agricultural Code is amended to read:

55922. (a) Any person that violates any provision of this chapter is liable civilly in the sum of five hundred dollars ($500) for each and every violation, such sum to be recovered in an action by the director in any court of competent jurisdiction. All sums which are recovered under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs.

The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 5.5. Section 55922 of the Food and Agricultural Code is amended to read:

55922. (a) Any person that violates any provision of this chapter is liable civilly in the sum of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for each and every violation, this sum to be recovered in an action by the secretary in any court of competent jurisdiction. All sums which are recovered under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 6. Section 56133.5 of the Food and Agricultural Code is amended to read:

56133.5. (a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ any person as an agent, or who previously was an agent, who meets any of the following criteria:

(1) Whose license has been revoked or is currently suspended.

(2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 6 (commencing with Section 55401).

(3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 6 (commencing with Section 55401).

(4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve employment of any person covered by subdivision (a) if the licensee furnishes and maintains a surety bond

in form and amount satisfactory to the department, but that shall not be less than ten thousand dollars ($10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due farm products creditors. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department. If the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or person's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe a person or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the person by a written notice. This written notice shall set out the charges against the licensee or person, prohibit employment or revoke or deny the license effective if and when any rights to an administrative hearing have been exhausted, and set out the licensee's or person's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

(1) There has been a mistake of fact or identity.

(2) The present role of the person provides no opportunity for a repeat of the prior behavior.

(3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or person can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e) (1) A licensee or person who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an

exemption by the department shall be afforded a hearing upon the licensee's or person's request under this chapter. The licensee or person shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or person's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, ''convicted of a crime'' includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of court in which a finding is made concerning any of the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

SEC. 7. Section 56382.5 of the Food and Agricultural Code is amended to read:

56382.5. (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall

be accompanied by two copies of all documents in the complainant's possession that are relevant to establishing the complaint, a filing fee of sixty dollars ($60), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.

(b) The respondent served shall answer within 30 calendar days of service. Respondent's response shall include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars ($300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers in accordance with standard procedures promulgated by the American Arbitration Association or other acceptable alternative dispute resolution entities.

(2) The hearing officers shall be familiar with the type of issues presented by such claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars ($1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent are charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

SEC. 8. Section 56621 of the Food and Agricultural Code is amended to read:

56621. It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Chapter 3 (commencing with Section 65500) of Part 2 of Division 22, Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Chapter 9.5 (commencing with Section 71000), Article 6 (commencing with Section 72101) of Chapter 10, Chapter 12.6 (commencing with Section 74701), Chapter 12.7 (commencing with Section 74801), Article 6 (commencing with Section 75131) of Chapter 13, Article 6 (commencing with Section 76141) of Chapter 14, Chapter 15 (commencing with Section 76201), Chapter 16.5 (commencing with Section 77001), Chapter 17 (commencing with Section 77201), Chapter 17.5 (commencing with Section 77401), Chapter 19 (commencing with Section 77701), Chapter 20 (commencing with Section 77901) of Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

SEC. 9. Section 56631 of the Food and Agricultural Code is amended to read:

56631. (a) Except as specified in Section 56632, any misdemeanor which is prescribed in this article is punishable by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover

investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 9.5. Section 56631 of the Food and Agricultural Code is amended to read:

56631. (a) Except as specified in Section 56632, any misdemeanor which is prescribed in this article is punishable by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 10. Section 56652 of the Food and Agricultural Code is amended to read:

56652. (a) Any person that violates any provision of this chapter is liable civilly in the sum of five hundred dollars ($500) for each and every violation. Such sum shall be recovered in an action by the director in any court of competent jurisdiction. All sums which are recovered pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(b) In a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 10.5. Section 56652 of the Food and Agricultural Code is amended to read:

56652. (a) Any person that violates any provision of this chapter is liable civilly in the sum of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for each and every violation. This sum shall be recovered in an action by the secretary in any court of competent jurisdiction. All sums which are recovered pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) For a violation of the offense described in subdivision (a), the department may recover investigative costs, excluding attorneys' fees and administrative overhead, for those charges where there has been a conviction in a court of law, or a court-supervised settlement has been reached. Nothing in this section allows the department to recover investigative costs for an administrative licensing action or any action that has not been filed in a court of law.

(c) Any person or entity responsible for investigative costs under this section shall be allowed to audit the department's investigative costs. The audit must be performed by a third-party certified public accountant and paid for by the person or entity requesting the audit. The department shall promulgate regulations to implement this subdivision by June 1, 2002.

SEC. 11. Section 4.5 of this bill incorporates amendments to Section 59901 of the Food and Agricultural Code proposed by both this bill and AB 2630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 55901 of the Food and Agricultural Code, and (3) this bill is enacted after AB 2630, in which case Section 4 of this bill shall not become operative.

SEC. 12. Section 5.5 of this bill incorporates amendments to Section 55922 of the Food and Agricultural Code proposed by both this bill and AB 2630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 55922 of the Food and Agricultural Code, and (3) this bill is enacted after AB 2630, in which case Section 5 of this bill shall not become operative.

SEC. 13. Section 9.5 of this bill incorporates amendments to Section 56631 of the Food and Agricultural Code proposed by both this

bill and AB 2630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56631 of the Food and Agricultural Code, and (3) this bill is enacted after AB 2630, in which case Section 9 of this bill shall not become operative.

SEC. 14. Section 10.5 of this bill incorporates amendments to Section 56652 of the Food and Agricultural Code proposed by both this bill and AB 2630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56652 of the Food and Agricultural Code, and (3) this bill is enacted after AB 2630, in which case Section 10 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 769

An act to amend Sections 15346.3, 15346.4, 15346.9, and 65053 of the Government Code, relating to economic development.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 15346.3 of the Government Code is amended to read:

15346.3. The California Defense Retention and Conversion Council shall consist of the following members, who shall be appointed as follows:

(a) The Governor shall have 11 appointees, who may include, but are not limited to, the following:

(1) The Secretary of Trade and Commerce, or his or her designee.

(2) The Secretary of Environmental Protection, or his or her designee.

(3) The Director of Employment Development, or his or her designee.

(4) The Director of Planning and Research, or his or her designee.

(5) The Director of the Energy Resources, Conservation and Development Commission, or his or her designee.

(6) The Director of Transportation, or his or her designee.

(7) The Director of the Employment Training Panel, or his or her designee.

(8) The Secretary of Resources, or his or her designee.

(9) A member who is an elected public official from local government representing a community with an active defense installation.

(10) A member who is an elected public official from local government representing a community with a closed defense installation.

(11) A public member selected at large.

(b) The Speaker of the Assembly shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(d) Nonvoting members, to consist of all of the following:

(1) At his or her option, the President of the University of California, or his or her designee.

(2) The Chancellor of the California State University, or his or her designee.

(3) The Chancellor of the California Community Colleges, or his or her designee.

(4) The Speaker of the Assembly, or his or her designee.

(5) The President pro Tempore of the Senate, or his or her designee.

(6) At the request of the Governor, a flag officer, or his or her designee, from each branch of the United States Armed Forces representing a mission or installation in California to serve as a liaison to the council.

SEC. 2. Section 15346.4 of the Government Code is amended to read:

15346.4. (a) The Secretary of Trade and Commerce shall serve as chairperson of the council.

(b) The Office of Military Base Retention shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all defense retention, conversion, and base reuse activities in the state.

SEC. 3. Section 15346.9 of the Government Code is amended to read:

15346.9. In addition to the duties specified in Section 15346.5, the council shall do all of the following:

(a) At the request of a council member and upon majority vote of the council, the council may review actions or programs by state agencies that may affect military base retention and reuse and offer comments or suggest changes to better integrate these actions or programs into the overall state strategic plan required pursuant to subdivision (a) of Section 15346.5.

(b) The council shall prepare a study considering strategies for the long-term protection of lands adjacent to military bases from development that would be incompatible with the continuing missions of those bases. The study shall include the effects of local land use encroachment, environmental impact considerations, and population growth issues. The study shall recommend basic criteria to assist local governments in identifying lands where incompatible development may adversely impact the long-term missions of these bases. The study shall also identify potential mechanisms, including recommendations for changes in law at the local or state level, to address these issues. In conducting this study, the council may use the Naval Air Station at Lemoore and Edwards Air Force Base as case studies.

The council shall hold public hearings on this study, including at least one in the vicinity of either Lemoore or Edwards. Notwithstanding Section 7550.5, the council shall prepare and submit to the Governor and the Legislature by November 30, 2000, a report on this study with any recommendations.

SEC. 4. Section 65053 of the Government Code is amended to read:

65053. This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 770

An act to amend Section 2 of Chapter 784 of the Statutes of 1997, relating to state property.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value, or for any lesser consideration authorized by law, and upon terms and conditions and subject to reservations and

exceptions that the director determines are in the best interest of the state, all or any part of the following property:

Parcel 1. Approximately a 49.14 acre irregularly shaped property (APN 048-010-210), under the jurisdiction of the State Department of Health Services, located at 6250 Lambie Road, Solano County.

Parcel 2. Approximately 350 acres of real property in San Bernardino County, identified by the Strategic Master Land Use Plan and Implementation Approach CIM Chino, and being located south of Edison Avenue, west of Euclid Avenue, and northerly of real property to be leased by the state to the City of Chino pursuant to subdivision (a) of Section 14672.14 of the Government Code, which was added by Chapter 500 of the Statutes of 1998.

SEC. 2. The Director of General Services may convey for less than fair market value, to the County of Sonoma, 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:

Approximately a 2.64 acre parcel (APN 050-261-83) known as Alder Park, located in the community of Kenwood, Sonoma County.

SEC. 3. (a) Notices of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Division 13 (commencing with Section 21100) of the Public Resources Code.

SEC. 4. The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

SEC. 5. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as 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. 6. Section 2 of Chapter 784 of the Statutes of 1997 is amended to read:

Sec. 2. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for

current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 1.37 acres, with structures used as offices by the State Department of Health Services, located at 5545 East Shields Avenue, Fresno, Fresno County.

Parcel 3. Approximately 6.4 acres of vacant land, being a portion of Agnews Developmental Center, West Campus, located at the northeast corner of Montague Expressway and Lick Mill Boulevard, Santa Clara County.

Parcel 4. Approximately 21 acres of vacant land, being a portion of the Agnews Developmental Center, West Campus, located on the east side of Lick Mill Boulevard, Santa Clara County.

Parcel 5. Approximately 0.76 acre of vacant land identified as Lot 15, Havenhurst Drive, Encino, Los Angeles County.

SEC. 7. Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, the Director of General Services, in consultation with the California Military Department, may convey to Plumas County approximately 2.4 acres of real property being a portion of the Quincy Armory in Plumas County for public recreational use only, and at no cost, except as provided in this section, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state. The deed shall indicate that, when the property is no longer utilized by Plumas County for public recreation purposes, title to the real property shall vest in the state. This transfer from the state to the county shall be on the express condition that the property is transferred in its ''as is'' condition and the state is to be held harmless from any claims or liabilities associated with the property and its condition. The Department of General Services shall be reimbursed by Plumas County only for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

SEC. 8. Notwithstanding any other provision of law, including, but not limited to, Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, the Director of General Services, in consultation with the California Military Department, may convey, at no cost, except as provided in this section, to the County of Plumas approximately 1.22 acres of real property being a portion of the Quincy Armory in Plumas

County currently being used by Plumas County for a waste disposal transfer site, to Plumas County on the terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state. The Department of General Services shall be reimbursed by Plumas County only for its costs related to the transfer, including, but not limited to, any survey costs, title transfer fees, and department staff time.

SEC. 9. The Director of Parks and Recreation, with the approval of the Director of General Services, may exchange real property of approximately 580 acres at Ahjumawi Lava Springs State Park in Shasta County with Pacific Gas and Electric Company for real property of equal or greater value, on the terms and conditions and subject to the reservations and exceptions that may be in the best interest of the state.

CHAPTER 771

An act to add Chapter 10 (commencing with Section 1450) to Division 6 of the Military and Veterans Code, relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Chapter 10 (commencing with Section 1450) is added to Division 6 of the Military and Veterans Code, to read:

CHAPTER 10. CENTRAL COAST VETERANS CEMETERY

1450. The Department of Veterans Affairs, in voluntary cooperation with the Monterey County Board of Supervisors, shall develop a master plan for a state-owned and state-operated Central Coast Veterans Cemetery, which shall be located on the grounds of the former Fort Ord in Monterey County.

1451. All moneys received for the master plan shall be deposited in the Central Coast Veterans Cemetery Master Development Fund, which is hereby created in the State Treasury. Money appropriated from the fund to the Department of Veterans Affairs shall be used by the department for planning purposes, to determine the project costs, regional impact, need, and ongoing state liability, and to develop a

master plan for a state-supported Central Coast Veterans Cemetery on the grounds of former Fort Ord in Monterey County.

SEC. 2. The Legislature hereby appropriates one hundred forty thousand dollars ($140,000) from the General Fund to the Central Coast Veterans Cemetery Master Development Fund for the master development plan of the Central Coast Veterans Cemetery pursuant to Section 1450 of the Military and Veterans Code.

SEC. 3. It is the intent of the Legislature to determine the costs, regional impact, need, ongoing state liability, and a master plan for a Central Coast Veterans Cemetery. Accordingly, as to the funding of the cemetery, the Department of Veterans Affairs shall research and prepare a State Cemetery Grant to be filed with the federal Department of Veterans Affairs for an amount representing 100 percent of the estimated cost for designing, developing, constructing, and equipping the cemetery.

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 commence with the master plan of the Central Coast Veterans Cemetery at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 772

An act to add and repeal Division 8 (commencing with Section 19000) of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Division 8 (commencing with Section 19000) is added to the Public Utilities Code, to read:

DIVISION 8. THE MARE ISLAND UTILITY DISTRICT ACT

CHAPTER 1. GENERAL PROVISIONS

19000. This division shall be known, and may be cited, as the Mare Island Utility District Act.

19001. As used in this division, the following terms have the following meanings:

(a) ''Board'' is the Board of Directors of the Mare Island Utility District.

(b) ''City'' is the City of Vallejo.

(c) ''County'' is the County of Solano.

(d) ''District'' is the Mare Island Utility District.

19002. A utility district is hereby established, to be called ''Mare Island Utility District,'' within the County of Solano, and the boundaries of the district shall include all that land located within the City of Vallejo, commonly known as Mare Island Naval Shipyard, approved for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510).

CHAPTER 2. ORGANIZATION AND FORMATION OF THE DISTRICT

19010. The board of directors of the district shall have five members who shall be appointed pursuant to this section. A director shall not be required to be a resident or a voter of the district. Two directors shall be members of the City Council of the City of Vallejo and one director shall be a member of the Board of Supervisors of the County of Solano. Two directors shall be ''at large'' directors who are neither city council members nor members of the board of supervisors of the county. The City Council of the City of Vallejo shall appoint four directors, including the two directors who are the city council members and the two ''at large'' directors. The Board of Supervisors of the County of Solano shall appoint the director who is a member of that board. The two ''at large'' directors shall have experience in one or more of the following areas: economic development, municipal infrastructure, or infrastructure financing. Three directors shall hold office for an initial term of four years, and two directors shall hold office for an initial term of two years. Thereafter, all directors shall hold office for a term of four years. When vacancies occur, the appointing authority shall fill the vacancy for the remainder of the term. A director's term shall commence immediately upon that director's appointment and qualification.

19012. The Mare Island Utility District shall commence operations upon the appointment of the five directors. If the district decides to transfer all or part of its operation to the city or the Vallejo Sanitation and Flood Control District or both of those entities, it may affect the transfer upon reaching agreement with the city or the Vallejo Sanitation and Flood Control District or both of those entities. If the district transfers all of its operations, the district shall cease to exist.

19014. The district may be dissolved pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5 of the Government Code.

CHAPTER 3. POWERS

19020. The directors shall collectively comprise the board of directors of the district and the board is the legislative body of the district. The board shall determine all matters and policies necessary for the proper administration and operation of the district. Except as provided otherwise, the board shall have all the powers and duties of a governing board of a municipal utility district as provided in the Municipal Utility District Act as set forth in Article 4 (commencing with Section 11881) of Chapter 3 of Division 6.

19022. The board shall conduct its meetings and transact business in accordance with the Municipal Utility District Act as set forth in Article 5 (commencing with Section 11907) of Chapter 3 of Division 6.

19024. The district may exercise all the powers and functions of a municipal utility district as provided in the Municipal Utility District Act as set forth in Chapter 6 (commencing with Section 12701) of Division 6, except as provided in subdivisions (a) and (b).

(a) The district shall provide only water, sewer, and storm water runoff facilities and services.

(b) The district may not have perpetual succession.

19026. Notwithstanding any other provision of law, the district may enter into contracts with either the city or the Vallejo Sanitation and Flood Control District, or both of them, to provide contract services for the provision of necessary utilities on Mare Island including, but not limited to, water, sewer services, and storm water runoff services.

CHAPTER 4. DEBT

19030. The district may borrow money and incur indebtedness for the operation of the district in accordance with the Municipal Utility District Act as set forth in Chapter 7.5 (commencing with Section 13371) of Division 6.

19032. The district shall limit any term of indebtedness not to exceed December 31, 2010.

CHAPTER 5. SUPPLEMENTAL PROVISIONS

19050. The district may not exercise annexation powers to extend or modify the boundaries of the district.

19052. The district does not have the authority to exclude territory from the district.

19054. Pursuant to the Mare Island Base Reuse Plan, the United States Navy is responsible for remediation of any environmental contamination of Mare Island prior to the transfer of all or any portion of Mare Island to the city. Each transfer will be pursuant to an agreement that includes indemnity provisions regarding the environmental conditions negotiated between the United States Navy and the city. To the extent that the contractual agreements between the city and the United States Navy permit the transfer of the indemnity provisions from the city to the newly-established Mare Island Utility District, the city shall have the authority to assign and transfer the indemnity provisions from the United States Navy to the district. The indemnity provisions may be assigned or transferred at the same time that the city transfers the existing infrastructure for water, sewer, and storm water sewers from the city to the district. The actual transfer of the existing water, sewer, and storm waters drainage infrastructure from the city to the district shall occur as soon as practicable following the receipt of the infrastructure from the United States Navy.

19060. This division shall remain in effect only until January 1, 2011, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

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 unique circumstances relating to Mare Island.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 773

An act to amend Section 11713.1 of, and to amend, repeal, and add Section 11614 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 11614 of the Vehicle Code is amended to read:

11614. No lessor-retailer licensed under this chapter shall do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement that is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be made or disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle, or service so advertised, at the price stated therein, or as so advertised.

(b) Advertise, or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding thirty-five dollars ($35) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) Fail to disclose, in the newspaper display advertisement of a vehicle for sale, that there will be added to the advertised total price, at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

For purposes of this subdivision, ''newspaper display advertisement'' means any advertisement in a newspaper that is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact

required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and thirty-five dollars ($35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. ''Free'' includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and

related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(u) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claim. The substantiating records shall be made available to the department upon request.

(v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(w) 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 11614 is added to the Vehicle Code, to read:

11614. No lessor-retailer licensed under this chapter may do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement that is untrue or misleading and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be made or disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle, or service so advertised, at the price stated therein, or as so advertised.

(b) Advertise, or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding thirty-five dollars ($35) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) (1) Fail to disclose, in an advertisement of a vehicle for sale, that there will be added to the advertised total price, at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

(2) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any web page of a lessor-retailer's web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and thirty-five dollars ($35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. ''Free'' includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(u) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claim. The substantiating records shall be made available to the department upon request.

(v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(w) This section shall become operative on July 1, 2001.

SEC. 3. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any web page of a dealer's web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which

charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in subdivision (b) of Section 18010 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term ''free'' includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as ''starting at,'' ''from,'' ''beginning as low as,'' or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms ''invoice,'' ''dealer's invoice,'' ''wholesale price,'' or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a ''commercial purchaser'' means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as ''added markup.''

(r) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, ''incentive'' means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle

identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) This section shall become operative on July 1, 2001.

SEC. 4. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars ($45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) For purposes of paragraph (1), ''advertisement'' means any advertisement in a newspaper, magazine, direct mail publication, or handbill that is two or more columns in width or one column in width and more than seven inches in length, or on any web page of a dealer's web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state

for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars ($45) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term ‘‘free’’ includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such

as ''starting at,'' ''from,'' ''beginning as low as,'' or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term ''rebate'' or similar words such as ''cash back'' in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, ''cash price'' has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms ''invoice,'' ''dealer's invoice,'' ''wholesale price,'' or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a ''commercial purchaser'' means a

dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is ''fully factory equipped.''

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as ''added mark-up.''

(r) Advertise any underselling claim, such as ''we have the lowest prices'' or ''we will beat any dealer's price,'' unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, ''incentive'' means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) This section shall become operative on July 1, 2001.

SEC. 5. Section 4 of this bill incorporates amendments to Section 11713.1 of the Vehicle Code proposed by both this bill and AB 1912. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11713.1 of the Vehicle Code, and (3) this bill is enacted after AB 1912, in which case Section 11713.1 of the Vehicle Code, as amended by AB 1912, shall remain operative only until July 1, 2001, at which time Section 4 of this bill shall become operative, and Section 3 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 774

An act relating to the Department of the California Highway Patrol.

[Approved by Governor September 26, 2000. Filed with
Secretary of State September 27, 2000.]

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

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

(1) The department is the largest statewide law enforcement organization in the nation and enjoys a worldwide reputation for excellence in public safety.

(2) Despite its rich history dating back to its official beginnings in 1929, the department has no single facility that chronicles its growth and development nor pays tribute to the many contributions and sacrifices made by the dedicated men and women who have worked for the department.

(b) The commissioner may plan and construct a California Highway Patrol Museum on the department's academy grounds in the City of West Sacramento. The purpose of the museum is to provide all Californians the opportunity to become familiar with the history of the department and the contributions made by its personnel to the State of California.

(c) The museum shall be funded entirely through private donations and no public funding shall be used, except for eligible federal funds.

(d) The operation and staffing of the museum shall be provided through volunteers organized by the department and the California Association of Highway Patrolmen, in consultation with a museum board of directors. Members of the museum board of directors shall be appointed by the commissioner. The members shall include at least one representative of the California Association of Highway Patrolmen and the department's academy commander. The board of directors shall be governed by a set of bylaws to be adopted in conformance with applicable statutes and regulations.

(e) Museum maintenance shall be performed by the department as part of its ongoing academy facility operations.

(f) The commissioner shall submit a report setting forth the scope of the project to the Joint Legislative Budget Committee for review and comment not less than 30 days prior to advertising for the submittal of proposals for the project.

(g) Notwithstanding any other provision of law, the project authorized in this section shall not be considered a public work, and shall not be subject to any review or approvals by the Department of General Services. The project shall be subject to prevailing wage laws.

(h) The museum shall be known as the CHP Commissioner Dwight O. ''Spike'' Helmick Museum.

CHAPTER 775

An act to amend Section 14838.5 of the Government Code, relating to public contracts.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising , bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code , and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars ($5,000), but less than one hundred thousand dollars ($100,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

CHAPTER 776

An act to amend Section 3320 of the Civil Code, to amend Section 14838.5 of the Government Code, to amend Section 38079 of the Health and Safety Code, to amend Sections 10295.5, 10300, 10302.5, 10302.6, 10304, 10307, 10308, 10308.5, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10318, 10319, 10320, 10320.5, 10321, 10325, 10326, 10327, 10328, 10330, 10331, 10332, 10333, 10334, 12100.5, 12100.7, 12101, 12102, 12103, 12104, 12108, 12109, 12112, 12113, and 12120 of, to amend the heading of Article 3 (commencing with Section 10300) of Chapter 2 of, to amend the heading of Chapter 2 (commencing with Section 10290) of, and to amend the heading of Chapter 3 (commencing with Section 12100) of, Part 2 of Division 2 of, and to repeal Sections

10295.1, 10295.3, 12111, and 12113.5 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 3320 of the Civil Code is amended to read:

3320. (a) In each contract for public works of improvement, entered into on or after January 1, 1996, the public agency shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract. If the public agency disputes in good faith any portion of the amount due, it may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld is not subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the prime design professional shall be entitled to a penalty of $1^1/_2$ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney's fees and costs.

(c) The penalty described in subdivision (b) is separate from, and in addition to, the design professionals' liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3.

(d) This section does not apply to state agency contracts subject to Section 927.6 of the Government Code.

(e) None of the rights or obligations created by this section between prime design professionals and public agencies apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(f) For purposes of this section:

(1) ''Public agency'' means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) ''Design professional'' means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) ''Prime design professional'' means a design professional with a written contract directly with the public agency.

SEC. 2. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code, and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than two thousand five hundred dollars ($2,500), but less than fifty thousand dollars ($50,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than two thousand five hundred dollars ($2,500) and for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 2.5. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars ($5,000), but less than one hundred thousand dollars ($100,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the

director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 3. Section 38079 of the Health and Safety Code is amended to read:

38079. (a) All cooperative agreements, regardless of the size of the contracting nonprofit organization, are subject to the late payment provisions in Section 927.6 of the Government Code.

(b) In implementing this division, the department shall have the authority of, and be subject to, the provisions set forth in Chapter 2 (commencing with Section 124475) of Part 4 of Division 106, except that those provisions apply to all cooperative agreements, not only those agreements with clinics. However, notwithstanding Section 124500, moneys in the Clinic Revolving Fund of the State Department of Health Services shall be used for purposes of this division only upon appropriation of funds by the Legislature for that purpose.

SEC. 4. The heading of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 2. STATE ACQUISITION OF GOODS AND SERVICES

SEC. 6. Section 10295.1 of the Public Contract Code is repealed.

SEC. 7. Section 10295.3 of the Public Contract Code is repealed.

SEC. 8. Section 10295.5 of the Public Contract Code is amended to read:

10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) The department shall revise its procedures and specifications for the acquisition of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.

(c) For purposes of this section, ''minerals'' means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances,

including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

SEC. 9. The heading of Article 3 (commencing with Section 10300) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is amended to read:

Article 3. Competitive Bidding and Other Acquisition Procedures

SEC. 10. Section 10300 of the Public Contract Code is amended to read:

10300. (a) A Customer and Supplier Advocate shall be established in the department as a resource to state agencies and departments, and suppliers seeking information regarding the state process, procedures, and regulations for bidding on state contracts, and as a resource to bidders seeking to file a protest on award in accordance with this chapter. The advocate shall, at a minimum, provide the following services to the protesting bidder:

(1) Assistance to customer departments and agencies regarding contracting rules and regulations, and acquisition resource options.

(2) Assistance to the bidder in assessing the validity of the bidder's proposed grounds of filing the protest in accordance with the terms of the solicitation, as well as statutory or regulatory guidelines governing the solicitation in question.

(3) Provision of information to the protesting bidder regarding avenues and options available to the bidder to proceed with a formal protest of the award.

(b) The advocate shall make services, as specified in this section, available on a timely basis to the protesting bidder.

(c) Notification to bidders regarding the availability of services by the advocate shall be included in the solicitation. This notification shall also outline procedures and timelines for bidders who may wish to engage the services of the advocate.

SEC. 11. Section 10302.5 of the Public Contract Code is amended to read:

10302.5. All product specifications that the department or any other state agency prepares for goods for any contract entered into by any state agency for the acquisition of goods under Section 10295 are not subject to the review and adoption procedure under Chapter 3.5 (commencing

with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 12. Section 10302.6 of the Public Contract Code is amended to read:

10302.6. Product specifications as prepared by the department or any other state agency shall not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California.

SEC. 13. Section 10304 of the Public Contract Code is amended to read:

10304. All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.

SEC. 14. Section 10307 of the Public Contract Code is amended to read:

10307. The director shall establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting.

SEC. 15. Section 10308 of the Public Contract Code is amended to read:

10308. Except as provided otherwise in this chapter, every acquisition of goods in excess of one hundred dollars ($100) for any state agency shall be made by or under the supervision of the department. However, the state agency may specify the quality of the goods to be acquired. If the department determines that the quality specified by the agency is inconsistent with the statewide standards established by the director under Section 10307, it shall change the request to make it consistent with the standards, and it shall notify the state agency, within a reasonable time, before a contract is issued. If the agency is of the opinion the interests of the state would not be served by the acquisition of goods of a lesser quality or different than that specified by the agency, the agency may request a hearing before the State Board of Control and the board shall determine which goods will best serve the interests of the state, whereupon the department shall issue a contract for the goods specified by the State Board of Control.

SEC. 16. Section 10308.5 of the Public Contract Code is amended to read:

10308.5. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in goods offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

SEC. 17. Section 10309 of the Public Contract Code is amended to read:

10309. Except as provided in Sections 10332 and 10333, no state agency may acquire goods in the open market, unless permission has been given by the department, upon a showing of the necessity therefor.

SEC. 18. Section 10310 of the Public Contract Code is amended to read:

10310. Upon the request of the department, every state agency that is authorized by law to acquire goods shall designate some person in the agency whose duty it shall be to make reports to the department at times and in a manner as it may require.

SEC. 19. Section 10311 of the Public Contract Code is amended to read:

10311. (a) An estimate or requisition approved by the state agency in control of the appropriation or fund against which an acquisition is to be charged, is full authority for any contract for goods of the quality specified by the agency or determined by the State Board of Control as provided in this article made pursuant thereto by the department.

(b) The department shall issue a call for bids within 30 days after receiving a requisition for any goods that are regularly acquired within this state. The period of closing time designated in the invitations for bids shall be exclusive of holidays and shall be extended to the next working day after a holiday.

(c) Except as provided in subdivision (d), after the closing date for receiving any bids within or without this state, the contract shall be awarded or the bids shall be rejected within 45 days unless a protest is filed as provided in Section 10306.

(d) After the 45-day time period prescribed by subdivision (c), the department may in its sound discretion either award the contract to the lowest responsible bidder meeting specifications who remains willing to accept the award or else reject all bids.

(e) The amendments made to this section at the 1987–88 Regular Session of the Legislature do not constitute a change in, but are declaratory of, existing law.

SEC. 20. Section 10312 of the Public Contract Code is amended to read:

10312. Immediately upon the rendition of services or the delivery of goods, the disbursing officer shall transmit the invoice or demand for payment together with his or her sworn statement to the Controller. The sworn statement shall show that the services have been rendered and the goods delivered to the state agency in accordance with the contract and law.

SEC. 21. Section 10313 of the Public Contract Code is amended to read:

10313. The director may make the services of the department under this article available, upon such terms and conditions as he or she may deem satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of television communications equipment.

SEC. 22. Section 10314 of the Public Contract Code is amended to read:

10314. Any contract for goods to be manufactured by the contractor specially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on such terms and conditions as the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 23. Section 10315 of the Public Contract Code is amended to read:

10315. The department may rent, lease, construct, and maintain warehouses and make the rules and regulations that are necessary for the proper and economical making of state acquisitions.

SEC. 24. Section 10318 of the Public Contract Code is amended to read:

10318. No state agency or employee thereof shall draft or cause to be drafted, any specifications for bids, in connection with the acquisition or contemplated acquisition of any goods or textbooks for use in the day and evening elementary schools of the state, in such a manner as to limit the bidding directly or indirectly, to any one bidder.

Bidders may be required to furnish a bond or other indemnification to the state against claims or liability for patent infringement.

SEC. 25. Section 10319 of the Public Contract Code is amended to read:

10319. To meet an emergency, goods of a perishable nature, in an amount not exceeding one hundred dollars ($100) in value, may be acquired by a state agency without the permission of the department.

SEC. 26. Section 10320 of the Public Contract Code is amended to read:

10320. (a) The department shall annually prepare a delegation program for district agricultural associations to be administered by the Department of Food and Agriculture and the department pursuant to the following criteria:

(1) The department shall annually review acquisitions to be included in the program and the amount of delegation for each type of acquisition.

(2) The department shall annually review with the Department of Food and Agriculture the aggregate limit for the delegation program.

(3) The department shall annually communicate with each fair eligible for the delegation program, information relating to the procedure to be followed for using the delegation, including, but not limited to, the things included in the delegation program.

(b) The Division of Fairs and Expositions in the Department of Food and Agriculture shall include, as part of its annual expenditure review and approval process presented to the Joint Committee on Fairs Allocation and Classification, a section describing the purchasing delegation authority granted to all district agricultural associations pursuant to subdivision (a). This information shall include, but need not be limited to, the annual amount of purchasing delegation authority requested by, and delegated to, each district agricultural association.

SEC. 27. Section 10320.5 of the Public Contract Code is amended to read:

10320.5. (a) Commencing January 1, 1992, all state agencies subject to this chapter that enter into installment purchase or lease-purchase contracts shall make periodic payments, which shall include interest computed from a date no later than the acceptance date of the goods purchased pursuant to the contract. However, if the contract requires an acceptance test, interest shall be computed from a date no later than the first day of the successful acceptance test period. Unless otherwise provided for in the contract, periodic payments shall commence upon acceptance of the goods or, if the contract requires an acceptance test, as of the first day of the successful acceptance test period. Late charges shall accrue for any periodic payment not made to the contractor or its assigns from either the payment date provided in the contract or 60 days following the receipt of a valid invoice for the periodic payment, whichever is later. However, in the event any invoice is received prior to the acceptance date, the receipt date of the invoice

shall be construed to be the acceptance date. Late charges under this section shall be assessed using the interest rate as specified in Section 927.6 of the Government Code.

(b) The department is authorized to refinance installment purchase contracts when, in the determination of the department, it is financially beneficial to the state to do so.

SEC. 28. Section 10321 of the Public Contract Code is amended to read:

10321. (a) The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be acquired locally at a price equivalent to or less than that available through a statewide or regional contract.

(b) Notwithstanding any other provision of law, the Department of Food and Agriculture shall develop criteria to be applied for opportunity purchases that are made by district agricultural associations, county and citrus fruit fairs, and the California Exposition and State Fair, individually or cooperatively.

(c) As used in this section, opportunity purchases means acquisitions made locally, either individually or cooperatively, at a price equal to or less than the price available through the office on or off a statewide or regional contract.

SEC. 29. Section 10325 of the Public Contract Code is amended to read:

10325. Each quarter, the department shall, upon request, provide each city, county, city and county, district, local government body, or public corporation empowered to expend public funds for the acquisition of consumable goods and other interested parties with a list of those items available for acquisition under Section 10324. The department may supplement the quarterly lists with a monthly supplement of changes, additions and deletions. Terms, conditions, and specifications shall be provided upon request.

SEC. 30. Section 10326 of the Public Contract Code is amended to read:

10326. In establishing bid specifications for the acquisition of motor vehicles and in determining the lowest responsible bidder, consideration may be given by the state to the probable resale value of the vehicles as determined by recognized published used car marketing guides and other established historical evidence of future used motor vehicle value or, in lieu thereof, by contractual guarantee of the apparent low bidder that the resale value of the vehicle will be no less in

proportion to bid price than any other comparable vehicle complying with specifications for which a bid was received.

SEC. 31. Section 10327 of the Public Contract Code is amended to read:

10327. Except for motor vehicles described in Section 43805 of the Health and Safety Code, the provisions of Article 1 (commencing with Section 43800) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code shall govern the acquisition of all motor vehicles by the state to the extent that the department determines that these low-emission vehicles are reasonable to meet state needs pursuant to Section 43804 of the Health and Safety Code.

SEC. 32. Section 10328 of the Public Contract Code is amended to read:

10328. The bid requirements prescribed in this article are not applicable to contracts for the acquisition of the following:

(a) Fluid milk and fluid cream, the price of which is established in accordance with Section 61871 of the Food and Agricultural Code.

(b) Fruits and vegetables procured under contract with growers for the use of canneries maintained and operated by state agencies, if these canneries are maintained and operated so that their canned products will meet the standards prescribed for similar commercially packed canned products under federal law.

(c) Agricultural surpluses that are available to the state or its agencies by any governmental agency.

SEC. 33. Section 10330 of the Public Contract Code is amended to read:

10330. On July 1 of each year, the department shall establish the minimum dollar level below which authority to acquire goods shall be delegated to state agencies that meet the requirements of Section 10333. The level established at eight hundred dollars ($800) on January 1, 1983, and adjusted on July 1, 1983, pursuant to former Section 14792.1 of the Government Code, shall be retained and adjusted each July 1 thereafter to reflect, at a minimum, the percentage change from April 1 of the prior year to April 1 of the current year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

SEC. 34. Section 10331 of the Public Contract Code is amended to read:

10331. The department shall establish a program for delegating authority to acquire goods to state agencies that meet the requirements of Section 10333. Each delegation shall be subject to annual review by the department. Delegated authority may be withdrawn at any time the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of Section 10333.

SEC. 35. Section 10332 of the Public Contract Code is amended to read:

10332. Any state agency that receives delegated authority to acquire goods shall be authorized, at a minimum, to make the following types of acquisitions:

(a) Acquisitions not exceeding the dollar value established pursuant to Section 10330.

(b) Acquisitions in any amount of goods available under an unexpired statewide or regional contract. Acquisitions of goods for which a valid statewide or regional contract is in effect may not be made, without the approval of the office, from a supplier other than the supplier with whom the state has a valid contract.

(c) Acquisitions in any amount of goods that state agencies are required, by Section 2807 of the Penal Code, to acquire from the Prison Industry Authority.

(d) Acquisitions not exceeding fifteen thousand dollars ($15,000) of goods designated in price schedules that the office has established with suppliers. Acquisitions not exceeding fifteen thousand dollars ($15,000) of goods designated in price schedules may be made from a supplier other than the supplier specified on a price schedule if another supplier offers the same or equivalent goods at a price lower than the price established in the price schedule. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods specified on a price schedule.

(e) Acquisitions not exceeding fifteen thousand dollars ($15,000) of goods that are available from the state warehouses but which the state agency can acquire from another supplier at a price lower than the price charged by the department. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods available from the state warehouses.

SEC. 36. Section 10333 of the Public Contract Code is amended to read:

10333. (a) The department shall delegate purchasing authority, as specified in Section 10332, to any state agency that does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's purchasing program.

(2) Establishes written policies and procedures, including procedures for ensuring and documenting competitive purchasing, complying with purchasing standards established pursuant to Section 10307, inspecting

acquired products for compliance with specifications, reporting contractor failures to deliver products as specified in contracts, ensuring that agency contracting personnel are free from conflict of interest, and complying with other provisions of law as the department may require.

(3) Establishes procedures for complying with the provisions of the Small Business Procurement and Contract Act. The procedures shall include procedures for meeting the goals for the extent of participation of small businesses in state contracting as established by the department pursuant to subdivision (a) of Section 14838 of the Government Code.

(4) Establishes policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.

(5) Reports the data to the office that the department may require.

(b) The department shall conduct an audit of each state agency to which purchasing authority has been delegated at least once in each three-year period. The authority to acquire goods may be withdrawn by the department at any time that the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of this section.

SEC. 37. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall acquire any goods from the state, unless the goods are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. ''State employee,'' as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of ''designated employee'' under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120-month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for

the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed by the State of California who is authorized to carry firearms may purchase his or her state-issued service firearm if the person's department head directs the department to change its state-issued service weapon system. The cost of the service firearm shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the firearm issued as determined by the department head, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her firearm in writing to the department within 10 calendar days of receiving the new state-issued weapon.

SEC. 38. The heading of Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 3. ACQUISITION OF INFORMATION TECHNOLOGY GOODS AND SERVICES

SEC. 39. Section 12100.5 of the Public Contract Code is amended to read:

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for contracting expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 40. Section 12100.7 of the Public Contract Code is amended to read:

12100.7. As used in this chapter:

(a) ''Department'' means the Department of General Services.

(b) ''Director'' means the Director of General Services.

(c) ''Information technology'' shall have the same definition as set forth in Section 11702 of the Government Code.

(d) ''Multiple award schedule'' (MAS) is an agreement established between the General Services Administration of the United States and

certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, and services.

(e) ''Multiple award'' means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.

(f) ''Office'' means the office in the department, by whatever name it may be called, which is responsible for contracting for goods and information technology, and is headed by the state procurement officer.

(g) For purposes of this chapter, ''value-effective acquisition'' may be defined to include, but not be limited to, the following:

(1) The operational cost that the state would incur if the bid or proposal is accepted.

(2) Quality of the product or service, or its technical competency.

(3) Reliability of delivery and implementation schedules.

(4) The maximum facilitation of data exchange and systems integration.

(5) Warranties, guarantees, and return policy.

(6) Supplier financial stability.

(7) Consistency of the proposed solution with the state's planning documents and announced strategic program direction.

(8) Quality and effectiveness of business solution and approach.

(9) Industry and program experience.

(10) Prior record of supplier performance.

(11) Supplier expertise with engagements of similar scope and complexity.

(12) Extent and quality of the proposed participation and acceptance by all user groups.

(13) Proven development methodologies and tools.

(14) Innovative use of current technologies and quality results.

SEC. 41. Section 12101 of the Public Contract Code is amended to read:

12101. It is the intent of the Legislature that policies developed by the Department of Information Technology and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

(a) The expeditious and value-effective acquisition of information technology goods and services to satisfy state requirements.

(b) The acquisition of information technology goods and services within a competitive framework.

(c) The delegation of authority by the Department of General Services to each state agency that has demonstrated to the department's satisfaction the ability to conduct value-effective information technology goods and services acquisitions.

(d) The exclusion from state bid processes, at the state's option, of any supplier having failed to meet prior contractual requirements related to information technology goods and services.

(e) The review and resolution of protests submitted by any bidders with respect to any information technology goods and services acquisitions.

SEC. 42. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

(a) Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a

procedure for submission and evaluation of a single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and

procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Information technology goods which have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.

SEC. 43. Section 12103 of the Public Contract Code is amended to read:

12103. In addition to the mandatory requirements enumerated in Section 12102, the acquisition policies developed and maintained by the

Department of Information Technology and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for the following:

(a) Price negotiation with respect to contracts entered into in accordance with this chapter.

(b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.

(c) Requirement of a bond or assessment of a cost penalty with respect to a contract or consideration of a contract offered by a supplier whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.

SEC. 44. Section 12104 of the Public Contract Code is amended to read:

12104. Beginning on December 15, 1993, and annually thereafter, the Department of General Services shall provide a report listing all acquisitions from the previous fiscal year that were subject to this chapter and involved the replacement of a computer central processing unit when only one bid was received and the bid was from the supplier whose equipment was being replaced. The report shall be submitted to the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee.

SEC. 45. Section 12108 of the Public Contract Code is amended to read:

12108. Until the time that the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of information technology goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of information technology goods and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

SEC. 46. Section 12109 of the Public Contract Code is amended to read:

12109. The Director of General Services may make the services of the department under this chapter available, upon the terms and conditions that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of information technology goods or services.

SEC. 47. Section 12111 of the Public Contract Code is repealed.

SEC. 48. Section 12112 of the Public Contract Code is amended to read:

12112. Any contract for information technology goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 49. Section 12113 of the Public Contract Code is amended to read:

12113. (a) Notwithstanding any other provision of law, state and local agencies may enter into agreements to pay for telecommunications services to be utilized beyond the current fiscal year. ''Telecommunications services'' for purposes of this section shall include, but not be limited to, central office-based leased communications systems equipped with primary station lines, capable of receiving in-dialed voice and data communications and capable of out-dialing voice and data communications and any customer premised equipment, software and installation costs necessary for utilization by the state or local agency.

(b) State and local agencies may enter into financing agreements for the acquisition of telecommunications services whenever the state or local agency may derive monetary benefit and greater services as a result of its ability to acquire capital at lower interest cost than the supplier of those services can provide directly to the agency or whenever the state or local agency may obtain a reduced cost of service based on length of agreement if offered by the supplier of telecommunications service.

(c) Acquisition requirements for financing of telecommunications goods and services shall be considered to have been met whenever the financing is within the scope of public sector requests for proposals or whenever the financing is offered by a sole source provider or that provider's assignee.

(d) The provisions of this section shall not be construed to alter or circumvent any existing acquisition procedure or requirement, nor to alter or circumvent the acquisition authority of any state or local agency.

SEC. 50. Section 12113.5 of the Public Contract Code is repealed.

SEC. 51. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and acquisition of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All acquisitions shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of information technology goods and services, except to the extent any directive or provision is uniquely applicable to information technology acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to acquisition of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 52. Section 2.5 of this bill incorporates amendments to Section 14838.5 of the Government Code proposed by both this bill and SB 1049. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 14838.5 of the Government Code, and (3) this bill is enacted after SB 1094, in which case Section 14838.5 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1049, at which time Section 2.5 of this bill shall become operative.

SEC. 53. 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 the statutory changes necessary to increase small business participation in state contracts, it is necessary for this act to take effect immediately as an urgency measure.

CHAPTER 777

An act to add and repeal Chapter 2 (commencing with Section 104335) of Part 2 of Division 103 of the Health and Safety Code, relating to spinal cord injury, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) (1) There are approximately 35,000 spinal cord injured persons residing in this state. Spinal cord injury is a condition that leaves individuals paralyzed and afflicts 250,000 Americans.

(2) The care of the 17,000 chronic spinal cord injured quadriplegics alone costs the State of California three hundred forty million dollars ($340,000,000) annually.

(3) Spinal cord injury has serious physical, emotional, financial, and social consequences for its victims and their families.

(4) There is no established treatment that can cure spinal cord injury.

(5) If cures are found for spinal cord injuries the incidence of quadriplegia will be greatly reduced.

(6) Cures for spinal cord injuries are on the threshold of being discovered.

(b) (1) Research is the primary hope for victims and their families.

(2) Research in spinal cord injury has produced experimental results that are of potential value in facilitating or effecting a restoration of function in damaged spinal cords.

(c) Despite the need to make progress toward treatments or cures for spinal cord injury, there is a lack of sufficient resources in California's postsecondary educational institutions to sustain recent scientific progress with respect to this condition. It is the intent of the Legislature to encourage and support research that has as one of its goals the discovery of methods to restore spinal cord function in humans with spinal cord injury.

(d) (1) The care and rehabilitation of acute, or newly injured, spinal cord injury victims cost the State of California sixty million dollars ($60,000,000) annually.

(2) Experimental treatments or techniques are currently under investigation, and these treatments may be of potential value in facilitating or effecting a restoration of function in damaged spinal cords if applied to humans within the first few hours after injury.

(3) Progress has been made in chronic spinal cord injury research including the discovery of molecules that promote the growth of chronically injured spinal cord cells involved in movement and sensation. Genes that control regeneration of chronically damaged spinal nerves and chemicals for activating those genes have been discovered. Substances that inhibit growth in the spinal cord have been discovered and antibodies to those inhibitors have been developed. These discoveries may pave the way for significant regeneration of the spinal cord.

SEC. 2. Chapter 2 (commencing with Section 104335) is added to Part 2 of Division 103 of the Health and Safety Code, to read:

CHAPTER 2. ROMAN REED SPINAL CORD INJURY RESEARCH ACT OF 1999

104335. This chapter shall be known and may be cited as the Roman Reed Spinal Cord Injury Research Act of 1999.

104336. (a) There is hereby established a Spinal Cord Injury Research Fund. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated to the University of California for the purposes of this chapter.

(b) The fund shall consist of money accepted by the University of California from grants and donations from private entities as well as public moneys transferred to the fund.

(c) Notwithstanding any other provision of law, money remaining in the fund at the end of a fiscal year shall not revert to the General Fund.

104337. The fund established pursuant to Section 104336 may be expended by the University of California for the award of grants to perform spinal cord injury research projects.

104338. (a) There is hereby created within the University of California the Spinal Cord Injury Research Program.

(b) The program shall promote spinal cord injury research in California as described in Section 104337.

(c) The University of California may establish scientific guidelines and rules and regulations as necessary for implementation of this chapter.

104339. This chapter shall not apply to the University of California unless the Regents of the University of California, by appropriate resolution, make these provisions applicable.

104339.5. This chapter shall be implemented only to the extent that funding for its purposes is appropriated to the Regents of the University of California in the annual Budget Act or another statute.

104339.6. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the programs for spinal cord injury research, and thus to reduce pain and suffering and address a pressing health need at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 778

An act to add Section 320.5 to the Penal Code, relating to charitable gaming.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 320.5 is added to the Penal Code, to read:

320.5. (a) Nothing in this chapter applies to any raffle conducted by an eligible organization as defined in subdivision (c) for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit, eligible organization that performs beneficial or charitable purposes if the raffle is conducted in accordance with this section.

(b) For purposes of this section, ''raffle'' means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:

(1) Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

(2) Winners of the prizes are determined by draw from among the coupons or stubs described in paragraph (1) that have been detached from all tickets sold for entry in the draw.

(3) The draw is conducted in California under the supervision of a natural person who is 18 years of age or older.

(4) (A) At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for beneficial or charitable purposes, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receiving these funds is itself an eligible organization as defined in subdivision (c). As used in this section, ''beneficial purposes'' excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the Corporations Code, of the eligible organization. In no event shall funds raised by raffles conducted pursuant to this section be used to fund any beneficial, charitable, or other purpose outside of California. This section does not preclude an eligible organization from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle.

(B) An employee of an eligible organization who is a direct seller of raffle tickets shall not be treated as an employee for purposes of workers' compensation under Section 3351 of the Labor Code if the following conditions are satisfied:

(i) Substantially all of the remuneration (whether or not paid in cash) for the performance of the service of selling raffle tickets is directly related to sales rather than to the number of hours worked.

(ii) The services performed by the person are performed pursuant to a written contract between the seller and the eligible organization and the contract provides that the person will not be treated as an employee with respect to the selling of raffle tickets for workers' compensation purposes.

(C) For purposes of this section, employees selling raffle tickets shall be deemed to be direct sellers as described in Section 650 of the Unemployment Insurance Code as long as they meet the requirements of that section.

(c) For purposes of this section, ''eligible organization'' means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code.

(d) Any person who receives compensation in connection with the operation of the raffle shall be an employee of the eligible organization

that is conducting the raffle, and in no event may compensation be paid from revenues required to be dedicated to beneficial or charitable purposes.

(e) No raffle otherwise permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of slot machine contained in Section 330a, 330b, or 330.1.

(f) No raffle otherwise permitted under this section may be conducted, nor may tickets for a raffle be sold, within an operating satellite wagering facility or racetrack inclosure licensed pursuant to the Horse Racing Law (Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code) or within a gambling establishment licensed pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code). A raffle may not be advertised, operated, or conducted in any manner over the Internet, nor may raffle tickets be sold, traded, or redeemed over the Internet. For purposes of this section, advertisement shall not be defined to include the announcement of a raffle on the web site of the organization responsible for conducting the raffle.

(g) No individual, corporation, partnership, or other legal entity shall hold a financial interest in the conduct of a raffle, except the eligible organization that is itself authorized to conduct that raffle, and any private, nonprofit, eligible organizations receiving financial support from that charitable organization pursuant to subdivisions (a) and (b).

(h) (1) An eligible organization may not conduct a raffle authorized under this section, unless it registers annually with the Department of Justice. The department shall furnish a registration form via the Internet or upon request to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary to carry out the provisions of this section on this form. This information shall include, but is not limited to, the following:

(A) The name and address of the eligible organization.

(B) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(C) The name and title of a responsible fiduciary of the organization.

(2) The department may require an eligible organization to pay an annual registration fee of ten dollars ($10) to cover the actual costs of the department to administer and enforce this section. The department may, by regulation, adjust the annual registration fee as needed to ensure that revenues willfully offset, but do not exceed, the actual costs incurred by

the department pursuant to this section. The fee shall be deposited by the department into the General Fund.

(3) The department shall receive General Fund moneys for the costs incurred pursuant to this section subject to an appropriation by the Legislature.

(4) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(4) The department shall maintain an automated data base of all registrants. Each local law enforcement agency shall notify the department of any arrests or investigation that may result in an administrative or criminal action against a registrant. The department may audit the records and other documents of a registrant to ensure compliance with this section.

(5) Once registered, an eligible organization must file annually thereafter with the department a report that includes the following:

(A) The aggregate gross receipts from the operation of raffles.

(B) The aggregate direct costs incurred by the eligible organization from the operation of raffles.

(C) The charitable or beneficial purposes for which proceeds of the raffles were used, or identify the eligible recipient organization to which proceeds were directed, and the amount of those proceeds.

(6) The department shall annually furnish to registrants a form to collect this information.

(7) The registration and reporting provisions of this section do not apply to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 and 5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The department may seek recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the Business and Professions Code. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of the this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

(*l*) This section shall become operative on July 1, 2001.

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distributing of the tickets.

(2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.

(3) The scheme does not require any of the participants to pay for a chance to win.

CHAPTER 779

An act to amend Section 19605.35 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 19605.35 of the Business and Professions Code is amended to read:

19605.35. (a) Notwithstanding paragraph (3) of subdivision (a) of Section 19605.3, no fee or charge authorized under that paragraph shall be paid by the operator of a satellite wagering facility that was licensed in the northern zone at any time prior to January 1, 2000. Notwithstanding any other provision of law, total on-track license fees

applicable to all wagers made within the inclosure of associations conducting thoroughbred racing meetings in the northern zone, including wagers on out-of-zone, out-of-state, and out-of-country races, shall be reduced by 0.3 percent. In addition, the total on-track license fees applicable to all wagers made within the inclosures of associations conducting thoroughbred racing meetings in the Counties of Alameda and San Mateo shall, beginning on January 1, 2001, and each year thereafter, be further reduced by an additional sum equal to the amount of impact fees respectively received by each association from the Santa Clara County Fair during the 2000 calendar year. The reduction in license fees provided by this section shall be distributed solely to the association in the form of commissions. All other distributions from handle shall be as provided elsewhere in this chapter.

(b) Notwithstanding paragraph (3) of subdivision (a) of Section 19605.3, no fee or charge authorized under that paragraph shall be paid by the operator of a satellite wagering facility that was also licensed at any time during the prior year to conduct a live thoroughbred or quarter horse racing meeting in the central or southern zones or a live fair racing meeting in Los Angeles County. Notwithstanding any other provision of law, on-track license fees applicable to all wagers made within the inclosure of an association conducting a thoroughbred meet in the central or southern zones, including wagers on out-of-zone, out-of-state, and out-of-country races, shall be reduced by 0.15 percent. The reduction in license fees provided by this section shall be distributed solely to the association in the form of commissions. All other distributions from handle shall be as provided elsewhere in this chapter.

CHAPTER 780

An act to amend Sections 100430 and 103700 of, and to add Article 8 (commencing with Section 103446) to Chapter 11 of Part 1 of Division 102 of, the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 100430 of the Health and Safety Code is amended to read:

100430. (a) The fees or charges for a record search or for the issuance of any license, permit, registration, or any other document pursuant to Sections 26832, 26840, and 26859 of the Government Code,

or Sections 102525, 102625, 102670, 102725, 102750, 103050, 103065, 103225, 103325, 103400, 103425, 103450, 103525, 103590, 103595, 103625, 103650, 103675, 103690, 103695, 103700, 103705, 103710, 103715, 103720, 103725, 103730, and 103735 of this code, may be adjusted annually by the percentage change determined pursuant to Section 100425.

The base amount to be adjusted shall be the statutory base amount of the fee or charge plus the sum of the prior adjustments to the statutory base amount. Whenever the statutory base amount is amended, the base amount shall be the new statutory base amount plus the sum of adjustments to the new statutory base amount calculated subsequent to the statutory base amendment. The actual dollar fee or charge shall be rounded to the next highest whole dollar.

(b) Beginning January 1, 1983, the department shall annually publish a list of the actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Article 8 (commencing with Section 103446) is added to Chapter 11 of Part 1 of Division 102 of the Health and Safety Code, to read:

Article 8. Revision of Birth Records to Correct Gender Errors Made by Birthing Hospitals or Local Registrars

103446. It is the intent of the Legislature that this article provide a remedy for the correction of birth certificates that contain gender errors made by the birthing hospital or local registrar when completing the original birth certificate.

103447. (a) Notwithstanding any other provision of this chapter, any person born in this state, or, in the case of a minor or incompetent person, his or her parent, legal guardian, or conservator, may apply to the State Registrar for the establishment and issuance of a new birth certificate and the sealing of the original, upon finding that the birthing hospital or local registrar made a gender error when completing the original birth certificate.

(b) The application shall be accompanied by one of the following:

(1) The sworn affidavit of the administrator of the hospital where the applicant was born or by a representative designated by the administrator, verifying that the incorrect gender information entered on the birth certificate was due to a hospital error.

(2) The sworn affidavit of the representative of the local registrar, verifying that the incorrect gender information entered on the birth certificate was due to an administrative error of the local registrar.

(3) The sworn affidavit of the physician attending the birth of the applicant and the sworn affidavit of the applicant's mother or father or a relative who was at least five years old at the time of the applicant's birth, verifying that, at the time of birth, the applicant's gender was different from that indicated on the original birth certificate.

103447.5. Upon receipt of the application and sworn affidavit or affidavits, and upon payment of the fee required by Section 103700, the State Registrar shall establish a new birth certificate for the person.

103448. The new birth certificate established pursuant to this article shall in no way indicate that it is not the original birth certificate of the applicant. The new birth certificate shall supplant any birth certificate previously registered for the applicant, and shall be the only birth certificate open to public inspection.

103448.5. The State Registrar shall transmit a certified copy of a birth certificate established pursuant to this article to the applicant, without additional charge.

103449. (a) When a new birth certificate is established pursuant to this article, the State Registrar shall so inform the local registrar and the county recorder whose records contain copies of the original certificate, who shall forward those copies to the State Registrar for filing with the original certificate, if he or she determines that it is practical for him or her to do so.

(b) If the local registrar or county recorder determines that it would be impractical to forward the copies of the original certificate to the State Registrar, he or she shall cover and seal the copies in a manner that does not deface or destroy them, and shall forward a verified statement of this action to the State Registrar.

SEC. 3. Section 103700 of the Health and Safety Code is amended to read:

103700. A fee of eleven dollars ($11) shall be paid to the State Registrar by the applicant for an amendment or revision to a birth, death, or marriage record under provisions of Articles 1 (commencing with Section 103225), 4 (commencing with Section 103325), 5 (commencing with Section 103350) and 8 (commencing with Section 103446) of Chapter 11, except for those amendments that are filed within one year of the date of occurrence of the event.

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

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 781

An act to add Chapter 4.5 (commencing with Section 13290) to Division 7 of the Water Code, relating to water.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Chapter 4.5 (commencing with Section 13290) is added to Division 7 of the Water Code, to read:

CHAPTER 4.5. ONSITE SEWAGE TREATMENT SYSTEMS

13290. For the purposes of this chapter:

(a) ''Local agency'' means any of the following entities:

(1) A city, county, or city and county.

(2) A special district formed pursuant to general law or special act for the local performance of functions regarding onsite sewage treatment systems within limited boundaries.

(b) ''Onsite sewage treatment systems'' includes individual disposal systems, community collection and disposal systems, and alternative collection and disposal systems that use subsurface disposal.

13291. (a) On or before January 1, 2004, the state board, in consultation with the State Department of Health Services, the California Coastal Commission, the California Conference of Directors of Environmental Health, counties, cities, and other interested parties, shall adopt regulations or standards for the permitting and operation of all of the following onsite sewage treatment systems in the state and shall apply those regulations or standards commencing six months after their adoptions:

(1) Any system that is constructed or replaced.

(2) Any system that is subject to a major repair.

(3) Any system that pools or discharges to the surface.

(4) Any system that, in the judgment of a regional board or authorized local agency, discharges waste that has the reasonable potential to cause a violation of water quality objectives, or to impair present or future beneficial uses of water, to cause pollution, nuisance, or contamination of the waters of the state.

(b) Regulations or standards adopted pursuant to subdivision (a), shall include, but shall not be limited to, all of the following:

(1) Minimum operating requirements that may include siting, construction, and performance requirements.

(2) Requirements for onsite sewage treatment systems adjacent to impaired waters identified pursuant to subdivision (d) of Section 303 of the Clean Water Act (33 U.S.C. Sec. 1313(d)).

(3) Requirements authorizing a qualified local agency to implement those requirements adopted under this chapter within its jurisdiction if that local agency requests that authorization.

(4) Requirements for corrective action when onsite sewage treatment systems fail to meet the requirements or standards.

(5) Minimum requirements for monitoring used to determine system or systems performance, if applicable.

(6) Exemption criteria to be established by regional boards.

(7) Requirements for determining a system that is subject to a major repair, as provided in paragraph (2) of subdivision (a).

(c) This chapter does not diminish or otherwise affect the authority of a local agency to carry out laws, other than this chapter, that relate to onsite sewage treatment systems.

(d) This chapter does not preempt any regional board or local agency from adopting or retaining standards for onsite sewage treatment systems that are more protective of the public health or the environment than this chapter.

(e) Each regional board shall incorporate the regulations or standards adopted pursuant to subdivisions (a) and (b) into the appropriate regional water quality control plans.

13291.5 It is the intent of the Legislature to assist private property owners with existing systems who incur costs as a result of the implementation of the regulations established under this section by encouraging the state board to make loans under Chapter 6.5 (commencing with Section 13475) to local agencies to assist private property owners whose cost of compliance with these regulations exceeds one-half of one percent of the current assessed value of the property on which the onsite sewage system is located.

13291.7. Nothing in this chapter shall be construed to limit the land use authority of any city, county, or city and county.

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CHAPTER 782

An act to amend Section 5002.6 of the Public Resources Code, relating to state beaches, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 5002.6 of the Public Resources Code is amended to read:

5002.6. (a) Notwithstanding any other provision of law, and upon the adoption of a resolution of acceptance pursuant to subdivision (h), the director shall grant to the County of Los Angeles, at no cost to the county, in trust for the people of the State of California, and subject to the conditions set forth in this section, all of the rights, title, and interest of the State of California in lands, and improvements thereon, generally described as follows, and more particularly described in the deed:

(1) Parcel 1. Approximately 3.83 acres of unimproved land, known as Las Tunas State Beach.

(2) Parcel 2. Approximately 31.21 acres of improved land, known as Topanga State Beach.

(3) Parcel 3. Approximately 46.34 acres of improved land, being a portion of Manhattan State Beach.

(4) Parcel 4. Approximately 26.03 acres of improved land, known as Redondo State Beach.

(5) Parcel 5. Approximately 18.07 acres of improved land, known as Royal Palms State Beach.

(6) Parcel 6. Approximately 30.64 acres of improved land, being a portion of Point Dume State Beach.

(7) Parcel 7. Approximately 15.12 acres of unimproved land, known as Dan Blocker State Beach, and that includes Latigo Shores.

(8) Parcel 8. Approximately 10.50 acres of improved land, being a portion of Malibu Lagoon State Beach, known as Surf Rider Beach.

(b) (1) The grant in trust for the people of the State of California made pursuant to subdivision (a) shall be made upon the express condition that the County of Los Angeles shall use, operate, and maintain the granted lands and improvements thereon for public recreation and beach purposes in perpetuity, and shall comply with all restrictions specified in each deed and prescribed in subdivision (e). The county shall not make or permit any other use of the granted lands and improvements. Any violation of this prohibition or any violation of

subdivision (e) shall constitute a breach of conditions for purposes of paragraph (2) of this subdivision.

(2) Upon a material breach of any condition of a grant made pursuant to this section which is determined by a court of competent jurisdiction to have been made intentionally, the State of California shall terminate the interest of the County of Los Angeles in the granted lands and improvements pursuant to Chapter 5 (commencing with Section 885.010) of Title 5 of Part 2 of Division 2 of the Civil Code. Upon exercise of the state's power of termination in accordance with Section 885.050 of the Civil Code, all rights, title, and interest of the County of Los Angeles in the granted lands and improvements shall terminate and revert to, and rest in, the state, and the county shall, within 30 days from the date of that judgment, pay to the state an amount equal to funds received by the county annually from the appropriation under schedule (a) of Item 3680-105-516 of the Budget Act of 1995 or from any subsequent appropriation received from the state specifically for the operation or maintenance of the granted lands and improvements. However, in no event shall that payment exceed the sum of one million five hundred thousand dollars ($1,500,000). The returned funds shall be deposited in the State Parks and Recreation Fund.

(3) Notwithstanding Section 885.030 of the Civil Code, the state's power of termination pursuant to paragraph (2) shall remain in effect in perpetuity.

(c) Any operating agreement between the State of California and the County of Los Angeles pertaining to any of the real property described in subdivision (a), in existence at the time of the grant, shall be terminated by operation of law upon the conveyance of the real property to the County of Los Angeles.

(d) There is hereby excepted and reserved to the State of California from the grants made pursuant to subdivision (a) all mineral deposits, as defined in Section 6407, which lie below a depth of 500 feet, without surface rights of entry.

(e) The transfer of all rights, title, and interest in the lands and improvements described in subdivision (a) shall be subject to the following restrictions, which shall be specified in each deed:

(1) (A) No new or expanded commercial development shall be allowed on the granted real property.

(B) Any project for new or expanded noncommercial development on the granted real property shall not exceed an estimated cost limitation for each project of two hundred fifty thousand dollars ($250,000), as adjusted annually to reflect the California Construction Index utilized by the Department of General Services. Any authorization for new and expanded noncommercial development shall be limited to projects that provide for the safety and convenience of the general public in the use

and enjoyment of, and enhancement of, recreational and educational experiences, and shall be consistent with the use, operation, and maintenance of the granted lands and improvements as required pursuant to subdivision (b). The expenditure of public funds for shoreline protective works shall only be permitted for those protective works that the County of Los Angeles determines are necessary for the protection of public infrastructure or a public facility. For purposes of this subparagraph, ''project'' means the whole of an action that constitutes the entirety of the particular type of new construction, alteration, or extension or betterment of an existing structure.

(C) Notwithstanding subparagraph (B), the deed for the conveyance of Royal Palms State Beach shall contain a provision that allows for the implementation of the state-approved local assistance grant (project number SL-19-003) to the County of Los Angeles already approved in the Budget Act of 1988 for noncommercial development to rehabilitate the existing park infrastructure at that state beach.

(D) The estimated cost limitation specified in subparagraph (B) shall not apply to the noncommercial projects necessary to bring public accessways and public facilities into compliance with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 12101 et seq.). The limitation described in this subparagraph shall not affect the restriction described in subparagraph (A) of paragraph (1) of subdivision (e).

(2) The granted lands and improvements may not be subsequently sold, transferred, or encumbered. For purposes of this section, ''encumber'' includes, but is not limited to, mortgaging the property, pledging the property as collateral, or any other transaction under which the property would serve as security for borrowed funds. Any lease of the granted lands or improvements shall only be consistent with the public recreation and beach purposes of this section.

(f) As an alternative to the exercise of the power of termination for a material breach of conditions, each condition set forth in this section shall be enforceable as a covenant and equitable servitude through injunction for specific performance issued by a court of competent jurisdiction.

(g) On and after June 30, 1998, it is the intent of the Legislature that any application by the County of Los Angeles Fire Department to secure state funding support for boating safety and enforcement on waters within the County of Los Angeles shall be given priority consideration by the Legislature, unless an alternative source of funding is secured prior to that date which serves the same or similar purposes.

(h) This section shall become operative only if the Board of Supervisors of the County of Los Angeles adopts a resolution accepting the fee title grants, in trust for the people of the State of California, in

accordance with this section, of the lands and improvements described in subdivision (a).

SEC. 2. With regard to any deed executed by the Director of Parks and Recreation granting property to the County of Los Angeles pursuant to Section 5002.6 of the Public Resources Code, the director, on or before June 30, 2001, shall execute an amendment to that deed modifying the deed restriction required by subdivision (e) of Section 5002.6 of the Public Resources Code to incorporate the provisions of subparagraph (D) of paragraph (1) of subdivision (e) of Section 5002.6 of the Public Resources Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to complete projects necessary to bring public accessways and public facilities into compliance with the Americans with Disabilities Act of 1990, it is necessary that this act take effect immediately.

CHAPTER 783

An act to add Section 6253.8 to the Government Code, relating to public records.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 6253.8 is added to the Government Code, to read:

6253.8. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

(f) This section shall become operative April 1, 2001.

CHAPTER 784

An act to add Section 100115.5 to the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 100115.5 is added to the Public Utilities Code, to read:

100115.5. (a) The authority may administer and implement any adopted countywide transportation expenditure plan funded in an amount greater than 50 percent from revenues derived from a retail transaction and use tax, if so designated in the plan or if the authority and the entity that imposes the tax have entered into an agreement that so provides. The authority may exercise those powers necessary to carry out this purpose.

(b) The authority may do any and all things necessary to ensure the completion of any projects established in a plan as set forth in subdivision (a). These projects may include, but are not limited to, all of the following:

(1) The construction and improvement of state highways.

(2) The construction, maintenance, and improvement of local roads, streets, and county highways.

(3) The construction, improvement, and operation of public transit systems, including paratransit services.

(4) The construction and improvement of bicycle and transportation facilities.

(c) The authority shall consult with and coordinate any actions for administering and implementing a plan as set forth in subdivision (a) with the cities in the county, the board of supervisors, and the Department of Transportation.

(d) Nothing in this section shall vary the terms of the cooperative agreement dated July 1, 1999, between the authority and the County of Santa Clara for the construction of transportation projects utilizing local transaction and use tax revenues derived from Santa Clara County general tax Measure B approved by the voters in November 1996. If any of the provisions of this section conflict with the provisions of that cooperative agreement, the provisions of the cooperative agreement shall take precedence.

SEC. 2. Notwithstanding any other provision of law, both of the following shall occur:

(a) The amount appropriated under Schedule (a)(2) of Item 2660-101-0001 of Section 2.00 of the Budget Act of 2000 (Chapter 52, Statutes of 2000) shall be used for the additional purpose of funding track improvements in the Coyote Valley related to the Caltrain, Coyote Valley Station.

(b) The amount appropriated under Schedule (a)(3) of Item 2660-101-0001 of Section 2.00 of the Budget Act of 2000 shall be used for the sole purpose of funding construction, track improvements, and right of way acquisition for the Vasona Light Rail, Winchester Extension, including a station and park and ride lot.

CHAPTER 785

An act to amend Sections 65090 and 65091 of the Government Code, relating to local planning.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 65090 of the Government Code is amended to read:

65090. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the

proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

SEC. 2. Section 65091 of the Government Code is amended to read:

65091. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.

(2) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

(3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the local agency may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

(4) If the notice is mailed or delivered pursuant to paragraph (3), the notice shall also either be:

(A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

(B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

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 786

An act to add Section 1198 to the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 1198 is added to the Harbors and Navigation Code, to read:

1198. (a) Except as provided in subdivision (c), the rates and charges for pilotage services shall not include the cost of primary marine insurance insuring a pilot, an organization of pilots, or their officers or employees, from liability arising from negligence or errors in judgment

in connection with the provision of pilotage service by pilots, organizations of pilots, or their officers or employees.

(b) A pilot who holds a state license for the Bays of San Francisco, San Pablo, and Suisun shall arrange to have available, upon advance written notice, trip insurance, with coverage limits of thirty-six million dollars ($36,000,000), naming as insureds the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, and insuring the named insureds against any civil claim, demand, suit, or action by whomsoever asserted, arising out of, or relating to, directly or indirectly, acts or omissions of the insureds in connection with the provision of pilotage service, except willful misconduct.

(c) Every vessel, owner, operator, or demise or bareboat charterer hiring a pilot with a state license for the Bays of San Francisco, San Pablo, and Suisun shall either defend, indemnify, and hold harmless pilots pursuant to paragraph (1), or alternatively, notify pilots of an intent to pay for trip insurance pursuant to paragraph (2). If a vessel or its owner, operator, or demise or bareboat charterer does not provide written notice pursuant to paragraph (2) of an intent to exercise the trip insurance option, then the vessel and its owner, operator, and demise or bareboat charterer will be deemed to have elected the obligation to defend, indemnify, and hold harmless pilots pursuant to paragraph (1).

(1) (A) Except for a vessel electing trip insurance pursuant to paragraph (2), a vessel subject to this subdivision, and its owner, operator, demise or bareboat charterer, and agent shall not assert any claim, demand, suit, or action against the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, for damages, including any rights over, arising out of, or connected with, directly or indirectly, any damage, loss, or expense sustained by the vessel, its owners, agents, demise or bareboat charterers, operators, or crew, or by any third parties, even if the damage results, in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

(B) A vessel subject to this paragraph and its owner, operator, and demise or bareboat charterer shall defend, indemnify, and hold harmless the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, with respect to liability arising from any claim, suit, or action, by whomsoever asserted, resulting in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees. The obligation to indemnify under this paragraph shall not apply to the extent that it causes the amount recoverable from a vessel, its owner, operator, or demise or bareboat charterer to exceed the limits of liability to which it is entitled under any bill of lading, charter party, contract of affreightment, or provision of law.

(C) The prohibition on claims by vessels, owners, operators, demise or bareboat charterers, and agents imposed by subparagraph (A) and the obligation to defend, indemnify, and hold harmless the pilot imposed by subparagraph (B) shall not apply in cases of willful misconduct by a pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

(D) A pilot who is the prevailing party shall be awarded attorney's fees and costs incurred in any action to enforce a right to indemnification provided pursuant to this subdivision.

(2) In lieu of paragraph (1), a vessel subject to this subdivision and its owner, operator, demise or bareboat charterer, and agent may elect to notify the pilot, or the organization of pilots to which the pilot belongs, of intent to pay for trip insurance, as described in subdivision (b). If notice of this election is received, in writing, by the pilot, or the organization of pilots to which the pilot belongs, at least 24 hours prior to the time pilotage services are requested, the vessel, and its owner, operator, demise or bareboat charterer, and agent are not subject to the requirements of paragraph (1). The pilot shall take all steps necessary to have trip insurance coverage in place during the vessel movement for which it is requested. The pilot shall assess to the vessel the premium for the trip insurance at the pilot's cost, in addition to any other applicable rates and charges for the pilotage services provided.

(d) Nothing in this section is intended to limit, alter, or diminish the liability of a vessel, owner, operator, or demise or bareboat charterer to any person who sustains loss or damage.

CHAPTER 787

An act to amend Sections 5272, 5300, 5403, 5405, and 5408 of, to add Sections 5211, 5216.4, and 5490.5 to, to repeal Section 5217 of, to amend and renumber Sections 5216.2, 5216.3, and 5216.4 of, the Business and Professions Code, to amend Section 99312.7 of the Public Utilities Code, to amend Sections 527 and 8314 of the Streets and Highways Code, and to amend Sections 1656.2, 1803, 14900, 14900.1, 22406, 34501.2, 34601, and 42232 of, to add Sections 13000.1 and 22406.1 to, and to repeal Section 4764.2 of, the Vehicle Code, relating to government.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 5211 is added to the Business and Professions Code, to read:

5211. ''Flashing'' is a light or message that changes more than once every four seconds.

SEC. 2. Section 5216.2 of the Business and Professions Code is amended and renumbered to read:

5216.3. ''Main-traveled way'' is the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. Main-traveled way does not include facilities such as frontage roads, ramps, auxiliary lanes, parking areas, or shoulders.

SEC. 3. Section 5216.3 of the Business and Professions Code is amended and renumbered to read:

5216.5. ''Nonconforming advertising display'' is an advertising display that was lawfully placed, but that does not conform to the provisions of this chapter, or the administrative regulations adopted pursuant to this chapter, that were enacted subsequent to the date of placing.

SEC. 4. Section 5216.4 of the Business and Professions Code is amended and renumbered to read:

5216.6. (a) ''Officially designated scenic highway or scenic byway'' is any state highway that has been officially designated and maintained as a state scenic highway pursuant to Sections 260, 261, 262, and 262.5 of the Streets and Highways Code or that has been officially designated a scenic byway as referred to in Section 131 (s) of Title 23 of the United States Code.

(b) ''Officially designated scenic highway or scenic byway'' does not include routes listed as part of the State Scenic Highway system, Streets and Highway Code, Section 263, et seq., unless those routes, or segments of those routes, have been designated as officially designated state scenic highways.

SEC. 5. Section 5216.4 is added to the Business and Professions Code, to read:

5216.4. ''Message center'' is an advertising display where the message is changed more than once every two minutes, but no more than once every four seconds.

SEC. 6. Section 5217 of the Business and Professions Code is repealed.

SEC. 7. Section 5272 of the Business and Professions Code is amended to read:

5272. With the exception of Article 4 (commencing with Section 5300) and Sections 5400 and 5404, inclusive, nothing contained in this chapter applies to any advertising display that is used exclusively for any of the following purposes:

(a) To advertise the sale, lease, or exchange of real property upon which the advertising display is placed.

(b) To advertise directions to, and the sale, lease, or exchange of, real property for which the advertising display is placed; provided, that the exemption of this paragraph does not apply to advertising displays visible from a highway and subject to the Highway Beautification Act of 1965 (23 U.S.C., Sec. 131).

(c) To designate the name of the owner or occupant of the premises or to identify the premises.

(d) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which the advertising display is placed if the display is upon the same side of the highway and within 1,000 feet of the point on the property or within 1,000 feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold.

SEC. 8. Section 5300 of the Business and Professions Code is amended to read:

5300. (a) A person engages in the business of outdoor advertising whenever, personally or through employees, that person places an advertising display, changes the advertising message of an advertising display that does not pertain exclusively to that person's business and is visible to a state highway or freeway.

(b) A manufacturer or distributor of a product for sale to the general public does not engage in the business of outdoor advertising when furnishing a sign pertaining to the product to a retailer of that product for installation on the retailer's place of business or when installing on the retailer's place of business a sign containing advertising pertaining to the product, the name or the business of the retailer.

SEC. 9. Section 5403 of the Business and Professions Code is amended to read:

5403. No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

(a) If within the right-of-way of any highway.

(b) If visible from any highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words ''stop'' or ''slow down.''

(c) If within any stream or drainage channel or below the floodwater level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

(d) If not maintained in safe condition.

(e) If visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal.

(f) If visible from any highway which is a part of the interstate or primary systems, and which is placed upon trees, or painted or drawn upon rocks or other natural features.

(g) If any illumination shall impair the vision of travelers on adjacent highways. Illuminations shall be considered vision impairing when its brilliance exceeds the values set forth in Section 21466.5 of the Vehicle Code.

(h) If visible from a state regulated highway displaying any flashing, intermittent, or moving light or lights.

SEC. 10. Section 5405 of the Business and Professions Code is amended to read:

5405. Notwithstanding any other provision of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway, other than any of the following:

(a) Directional or other official signs or notices that are required or authorized by law, including, but not limited to, signs pertaining to natural wonders and scenic and historical attractions, and which comply with regulations adopted by the director relative to their lighting, size, number, spacing, and any other requirements as may be appropriate to implement this chapter which are consistent with national standards adopted by the United States Secretary of Transportation pursuant to subdivision (c) of Section 131 of Title 23 of the United States Code.

(b) Advertising displays advertising the sale or lease of the property upon which they are located, if all advertising displays within 660 feet of the edge of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251 and 5415.

(c) Advertising displays which advertise the business conducted, services rendered, or goods produced or sold upon the property upon which the advertising display is placed, if the display is upon the same side of the highway as the advertised activity; and if all advertising displays within 660 feet of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251, 5403, and 5415; and except that no advertising display shall be placed after January 1, 1971, if it contains flashing, intermittent, or moving lights (other than that part necessary to give public service information, including, but not limited

to, the time, date, temperature, weather, or similar information, or a message center display as defined in subdivision (d)).

(d) (1) Message center displays that comply with all requirements of this chapter. The illumination or the appearance of illumination resulting in a message change of a message center display is not the use of flashing, intermittent, or moving light for purposes of subdivision (b) of Section 5408, except that no message center display may include any illumination or message change that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than four seconds. No message center display may be placed within 1,000 feet of another message center display on the same side of the highway. No message center display may be placed in violation of Section 131 of Title 23 of the United States Code.

(2) Any message center display located beyond 660 feet from the edge of the right-of-way of an interstate or primary highway and permitted by a city, county, or city and county on or before December 31, 1988, is in compliance with Article 6 (commencing with Section 5350) and Article 7 (commencing with Section 5400) for purposes of this section.

(3) Any message center display legally placed on or before December 31, 1996, which does not conform with this section may continue to be maintained under its existing criteria if it advertises only the business conducted, services rendered, or goods produced or sold upon the property upon which the display is placed.

(4) This subdivision does not prohibit the adoption by a city, county, or city and county of restrictions or prohibitions affecting off-premises message center displays which are equal to or greater than those imposed by this subdivision, if that ordinance or regulation does not restrict or prohibit on-premises advertising displays, as defined in Chapter 2.5 (commencing with Section 5490).

(e) Advertising displays erected or maintained pursuant to regulations of the director, not inconsistent with the national policy set forth in subdivision (f) of Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of Transportation, and designed to give information in the specific interest of the traveling public.

SEC. 11. Section 5408 of the Business and Professions Code is amended to read:

5408. In addition to the advertising displays permitted by Section 5405 to be placed within 660 feet of the edge of the right-of-way of interstate or primary highways, advertising displays conforming to the following standards, and not in violation of any other provision of this chapter, may be placed in those locations if placed in business areas:

(a) Advertising displays may not be placed that exceed 1,200 square feet in area with a maximum height of 25 feet and a maximum length of 60 feet, including border and trim, and excluding base or apron supports and other structural members. This subdivision shall apply to each facing of an advertising display. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding 350 square feet each may be erected in a facing. Any advertising display lawfully in existence on August 1, 1967, that exceeds 1,200 square feet in area, and that is permitted by city or county ordinance, may be maintained in existence.

(b) Advertising displays may not be placed that are so illuminated that they interfere with the effectiveness of, or obscure any official traffic sign, device, or signal; nor shall any advertising display include or be illuminated by flashing, intermittent, or moving lights (except that part necessary to give public service information such as time, date, temperature, weather, or similar information); nor shall any advertising display cause beams or rays of light to be directed at the traveled ways if the light is of an intensity or brilliance as to cause glare or to impair the vision of any driver, or to interfere with any driver's operation of a motor vehicle.

(c) Advertising displays may not be placed to obstruct, or otherwise physically interfere with, an official traffic sign, signal, or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging, or intersecting traffic.

(d) No advertising display shall be placed within 500 feet from another advertising display on the same side of any portion of an interstate highway or a primary highway that is a freeway. No advertising display shall be placed within 500 feet of an interchange, or an intersection at grade, or a safety roadside rest area on any portion of an interstate highway or a primary highway that is a freeway and if the interstate or primary highway is located outside the limits of an incorporated city and outside the limits of an urban area. No advertising display shall be placed within 300 feet from another advertising display on the same side of any portion of a primary highway that is not a freeway if that portion of the primary highway is located outside the limits of an incorporated city and outside the limits of an urban area. No advertising display shall be placed within 100 feet from another advertising display on the same side of any portion of a primary highway that is not a freeway if that portion of the primary highway is located inside the limits of an incorporated city or inside the limits of an urban area.

(e) Subdivision (d) does not apply to any of the following:

(1) Advertising displays that are separated by a building or other obstruction in a manner that only one display located within the

minimum spacing distances set forth herein is visible from the highway at any one time.

(2) Double-faced, back-to-back, or V-type advertising display, with a maximum of two signs per facing, as permitted in subdivision (a).

(3) Advertising displays permitted by subdivisions (a) to (c), inclusive, of Section 5405. The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway.

(4) Any advertising display lawfully in existence on August 1, 1967, which does not conform to this subdivision but that is permitted by city or county ordinances.

(f) ''Urban area,'' as used in subdivision (d), shall be determined in accordance with Section 101(a) of Title 23 of the United States Code.

SEC. 12. Section 5490.5 is added to the Business and Professions Code, to read:

5490.5. (a) For purposes of this chapter, ''message center'' is an advertising display where the message is changed more than once every two minutes, but no more than once every four seconds.

(b) On-premise message centers visible to traffic from any interstate or primary highway shall meet all of the following requirements:

(1) The display may not include any message that is in motion or appears to be in motion.

(2) The display may not change the intensity of illumination.

(3) The display may not change the message more than once every four seconds.

SEC. 13. Section 99312.7 of the Public Utilities Code is amended to read:

99312.7. (a) Not later than each January 31st, the Controller shall send to each transportation planning agency and county transportation commission, and the San Diego Metropolitan Transit Development Board, an estimate of the amount of funds to be allocated to it during the next fiscal year pursuant to Sections 99313 and 99314.

(b) Not later than each August 1st, on the basis of the amount appropriated in the Budget Act for purposes of Sections 99313 and 99314, the Controller shall send to each of the entities an estimate of the amount of funds to be allocated to it during the fiscal year.

This section shall become operative on July 1, 1987.

SEC. 14. Section 527 of the Streets and Highways Code is amended to read:

527. (a) Route 227 is from Route 1 south of Oceano to Route 101 in San Luis Obispo.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Arroyo Grande the portion of Route 227 that is located within the city limits of that city, upon terms and conditions the

commission finds to be in the best interests of the state, including, but not limited to, a condition that the City of Arroyo Grande maintain within its jurisdiction signs directing motorists to the continuation of Route 227.

(2) A relinquishment under this subdivision shall become effective immediately following the recording by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

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

(A) The portion of Route 227 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 227 relinquished under this subdivision may not be considered for future adoption under Section 81.

SEC. 15. Section 8314 of the Streets and Highways Code is amended to read:

8314. Section 892 applies to a street, highway, or public service easement vacated pursuant to this part.

SEC. 16. Section 1656.2 of the Vehicle Code is amended to read:

1656.2. The department shall prepare and publish a printed summary describing the penalties for noncompliance with Sections 16000 and 16028, which shall be included with each motor vehicle registration, registration renewal, and transfer of registration and with each driver's license and license renewal. The printed summary may contain, but is not limited to, the following wording:

"IMPORTANT FACTS ABOUT ENFORCEMENT OF CALIFORNIA'S COMPULSORY FINANCIAL RESPONSIBILITY LAW

California law requires every driver to carry written evidence of valid automobile liability insurance, a thirty-five thousand dollar ($35,000) bond, a thirty-five thousand dollar ($35,000) cash deposit, or a certificate of self-insurance that has been issued by the Department of Motor Vehicles.

You must provide evidence of financial responsibility when you renew the registration of a motor vehicle, and after you are cited by a peace officer for a traffic violation or are involved in any traffic accident. The law requires that you provide the officer with the name and address of your insurer and the policy identification number. Your insurer will provide written evidence of this number. Failure to provide evidence of your financial responsibility can result in fines of up to five hundred dollars ($500) and loss of your driver's license. Falsification of evidence can result in fines of up to seven hundred

fifty dollars ($750) or 30 days in jail, or both, in addition to a one-year suspension of driving privileges.

Under existing California law, if you are involved in an accident that results in damages of over five hundred dollars ($500) to the property of any person or in any injury or fatality, you must file a report of the accident with the Department of Motor Vehicles within 10 days of the accident. If you fail to file a report or fail to provide evidence of financial responsibility on the report, your driving privilege will be suspended for up to four years. Your suspension notice will notify you of the department's action and of your right to a hearing. Your suspension notice will also inform you that if you request a hearing, it must be conducted within 30 days of your written request, and that a decision is to be rendered within 15 days of the conclusion of the hearing.''

SEC. 17. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court in which a person was convicted of any violation of this code, was convicted of any violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of any violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or any violation of Section 191.5 of the Penal Code when the conviction resulted from the operation of a vessel, was convicted of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.

(7) Division 16.5 (commencing with Section 38000).

(8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.

(c) If the court impounds a license, or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23538, subdivision (b) of Section 23542, subdivision (b) of Section 23562, or subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 18. Section 4764.2 of the Vehicle Code is repealed.

SEC. 19. Section 13000.1 is added to the Vehicle Code, to read:

13000.1. (a) The department may refuse to issue or renew an identification card to any person for any of the following reasons:

(1) The department determines that the person has knowingly used a false or fictitious name in any application.

(2) The department determines that the person has impersonated another in making an application.

(3) The department determines that the person has knowingly made a false statement, knowingly concealed a material fact, or otherwise committed any fraud on any application.

(b) The department may declare an identification card invalid upon any of the grounds specified in subdivision (a) as reason to refuse to reissue or renew an identification card. The holder of an identification card that has been declared invalid shall surrender the identification card to the department.

SEC. 20. Section 14900 of the Vehicle Code is amended to read:

14900. Upon application for an original class C or M driver's license, there shall be paid to the department a fee of twelve dollars ($12) for a license that will expire on the fourth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

SEC. 21. Section 14900.1 of the Vehicle Code is amended to read:

14900.1. Except as provided in Sections 15250.5 and 15255, upon application for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid to the department a fee of fifteen dollars ($15) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

SEC. 22. Section 22406 of the Vehicle Code is amended to read:

22406. No person may drive any of the following vehicles on a highway at a speed in excess of 55 miles per hour:

(a) A motortruck or truck tractor having three or more axles or any motortruck or truck tractor drawing any other vehicle.

(b) A passenger vehicle or bus drawing any other vehicle.

(c) A schoolbus transporting any school pupil.

(d) A farm labor vehicle when transporting passengers.

(e) A vehicle transporting explosives.

(f) A trailer bus, as defined in Section 636.

SEC. 23. Section 22406.1 is added to the Vehicle Code, to read:

22406.1. Any person who operates a commercial motor vehicle, as defined in Section 15210, upon a highway at a speed exceeding a maximum speed limit established under this code by 15 miles per hour or more, is guilty of a misdemeanor. A violation of this section shall be considered a ''serious traffic violation,'' as defined in subdivision (i) of Section 15210, and shall be subject to the sanctions provided under

Section 15306 or 15308, in addition to any other penalty provided by law.

SEC. 24. Section 34501.2 of the Vehicle Code is amended to read:

34501.2. (a) The regulations adopted under Section 34501 for vehicles engaged in interstate or intrastate commerce shall establish hours-of-service regulations for drivers of those vehicles that are consistent with the hours-of-service regulations adopted by the United States Department of Transportation in Part 395 of Title 49 of the Code of Federal Regulations, as those regulations now exist or are hereafter amended.

(b) The regulations adopted under Section 34501 for vehicles engaged in intrastate commerce that are not transporting hazardous substances or hazardous waste, as those terms are defined by regulations in Section 171.8 of Title 49 of the Code of Federal Regulations, as those regulations now exist or are hereafter amended, shall have the following exceptions:

(1) The maximum driving time within a work period shall be 12 hours for a driver of a truck or truck tractor, except for a driver of a tank vehicle with a capacity of more than 500 gallons transporting flammable liquid, who shall not drive for more than 10 hours within a work period.

(2) No motor carrier shall permit or require a driver to drive, nor shall any driver drive, for any period after having been on duty for 80 hours in any consecutive eight days.

(3) A driver employed by an electrical corporation, as defined in Section 218 of the Public Utilities Code, a gas corporation, as defined in Section 222 of that code, a telephone corporation, as defined in Section 234 of that code, a water corporation, as defined in Section 241 of that code, or a public water district as defined in Section 20200 of the Water Code, may be permitted or required to drive more than the number of hours specified in subdivision (a) while operating a public utility or public water district vehicle during the emergency restoration of service.

(4) Any other exceptions applicable to drivers assigned to governmental fire suppression and prevention, as determined by the department.

(5) A driver employed by a law enforcement agency, as defined in Section 390.3(f)(2) of Title 49 of the Code of Federal Regulations, as that section now exists or is hereafter amended, during an emergency or to restore the public peace.

(c) The regulations adopted under Section 34501 for vehicles engaged in the transportation of farm products in intrastate commerce shall include all of the following provisions:

(1) A driver employed by an agricultural carrier, including a carrier holding a seasonal permit, or by a private carrier, when transporting farm products from the field to the first point of processing or packing, shall

not drive for any period after having been on duty 16 hours or more following eight consecutive hours off duty and shall not drive for any period after having been on duty for 112 hours in any consecutive eight-day period, except that a driver transporting special situation farm products from the field to the first point of processing or packing, or transporting livestock from pasture to pasture, may be permitted, during one period of not more than 28 consecutive days or a combination of two periods totaling not more than 28 days in a calendar year, to drive for not more than 12 hours during any workday of not more than 16 hours. A driver who thereby exceeds the driving time limits specified in paragraph (2) of subdivision (b) shall maintain a driver's record of duty status, and shall keep a duplicate copy in his or her possession when driving a vehicle subject to this chapter. These records shall be presented immediately upon request by any authorized employee of the department, or any police officer or deputy sheriff.

(2) Upon the request of the Director of Food and Agriculture, the commissioner may, for good cause, temporarily waive the maximum on-duty time limits applicable to any eight-day period when an emergency exists due to inclement weather, natural disaster, or an adverse economic condition that threatens to disrupt the orderly movement of farm products during harvest for the duration of the emergency. For purposes of this paragraph, an emergency does not include a strike or labor dispute.

(3) For purposes of this subdivision, the following terms have the following meanings:

(A) ''Farm products'' means every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax, oilseeds, poultry, livestock, milk, or timber.

(B) ''First point of processing or packing'' means a location where farm products are dried, canned, extracted, fermented, distilled, frozen, ginned, eviscerated, pasteurized, packed, packaged, bottled, conditioned, or otherwise manufactured, processed, or preserved for distribution in wholesale or retail markets.

(C) ''Special situation farm products'' means fruit, tomatoes, sugar beets, grains, wine grapes, grape concentrate, cotton, or nuts.

SEC. 25. Section 34601 of the Vehicle Code is amended to read:

34601. (a) As used in this division, ''motor carrier of property'' means any person who operates any commercial motor vehicle as defined in subdivision (c). ''Motor carrier of property'' does not include a household goods carrier, as defined in Section 5109 of the Public Utilities Code, a household goods carrier transporting used office, store, and institution furniture and fixtures under its household goods carrier permit pursuant to Section 5137 of the Public Utilities Code, persons providing only transportation of passengers, or a passenger stage

corporation transporting baggage and express upon a passenger vehicle incidental to the transportation of passengers.

(b) As used in this division, ''for-hire motor carrier of property'' means a motor carrier of property as defined in subdivision (a) who transports property for compensation.

(c) (1) As used in this division, except as provided in paragraph (2), a ''commercial motor vehicle'' means any self-propelled vehicle listed in subdivisions (a), (b), (f), (g), and (k) of Section 34500, any motor truck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motor vehicle used to transport property for compensation.

(2) As used in this division, ''commercial motor vehicle'' does not include any of the following:

(A) Vehicles identified in subdivision (f) of Section 34500, if the gross vehicle weight rating of the towing vehicle is 10,000 pounds or less.

(B) Vehicles identified in subdivision (g) of Section 34500, if the hazardous material transportation does not require the display of placards under Section 27903, a license under Section 32000.5, or a hazardous waste transporter registration under Section 25163 of the Health and Safety Code, and the vehicle is not operated in commercial use.

(C) Vehicles operated by a household goods carrier, as defined in Section 5109 of the Public Utilities Code, under the household goods carrier permit pursuant to Section 5137 of that code.

(D) Vehicles operated by a household goods carrier to transport used office, store, and institution furniture and fixtures under its household goods carrier permit pursuant to Section 5137 of the Public Utilities Code.

(E) Pickup trucks as defined in Section 471, if the conditions in subparagraphs (A) and (B) are also met.

(F) Two-axle daily rental trucks with a gross vehicle weight rating of less than 26,001 pounds, when operated in noncommercial use.

(G) Motor trucks or two-axle truck tractors, with a gross vehicle weight rating of less than 26,001 pounds, when used solely to tow a camp trailer, trailer coach, fifth-wheel travel trailer, or utility trailer. Vehicle combinations described in this subparagraph are not subject to Section 27900, 34501.12, or 34507.5.

(d) For purposes of this chapter, ''private carrier'' means a motor carrier of property, who transports only his or her own property, including, but not limited to, the delivery of goods sold by that carrier.

SEC. 26. Section 42232 of the Vehicle Code is amended to read:

42232. The application for refund shall be presented to the department in a format prescribed by the department within three years

from the date of payment of the erroneous or excessive fee or penalty and shall identify the payment made and state the grounds upon which it is claimed that the payment was excessive or erroneous.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 788

An act to add Section 14035.56 to, and to add and repeal Section 14035.57 of, the Government Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

SECTION 1. Section 14035.56 is added to the Government Code, to read:

14035.56. (a) Paragraph (2) of subdivision (c) of Section 14035.55 does not apply to service provided for disabled passengers who rely substantially on the use of wheelchairs and travel by motor carrier over any regular route that operates on the portion of State Highway Route 17 that is between the City of Santa Cruz and the City of San Jose.

(b) This section shall remain in effect only until one of the following dates, whichever comes first, and as of that date is repealed:

(1) January 1, 2002.

(2) The date that all motor carriers of passengers that operate regular service on the route described in subdivision (a) operate only vehicles on that route that are fully accessible to disabled passengers who rely substantially on the use of wheelchairs.

(3) The date that the memorandum of understanding described in Section 14035.57 is executed by all parties listed in that section.

SEC. 2. Section 14035.57 is added to the Government Code, to read:

14035.57. The department shall encourage the Santa Cruz Metropolitan Transit District, the Santa Clara Valley Transportation Authority, Amtrak, and any private motor carrier of passengers that

operates regular service on the route described in subdivision (a) of Section 14035.56 to develop and execute a memorandum of understanding that addresses the long-term solutions to the transportation needs of passengers traveling by bus between the City of Santa Cruz and the City of San Jose on service operated substantially on State Highway Route 17. The memorandum shall address the necessary funding and capital needs to provide this public transit service, and other operational requirements for additional public transit service on this route. The memorandum shall also address ways that Amtrak, local public transit operators, and local private sector motor carriers of passengers may combine or package their respective services and facilities to the public as a means of improving services to the public.

SEC. 3. (a) Because of an immediate and specific set of operating factors unique to the state-supported passenger rail feeder bus service operated between the City of Santa Cruz and the City of San Jose, and because these unique factors have created a temporary hardship for some of the passengers utilizing this service, the Legislature finds and declares that it is necessary to enact legislation to address this hardship.

(b) Due to the unique nature of the problem described in subdivision (a), the Legislature further finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in this act is necessarily applicable only to the bus service described herein.

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 address, at the earliest possible time, the needs of commuters utilizing state-supported passenger rail feeder bus service between the City of Santa Cruz and the City of San Jose, it is necessary that this act take effect immediately.

CHAPTER 789

An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

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

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

(a) The distribution, sale, and service of new motor vehicles in the State of California vitally affects the general economy of this state and the public welfare.

(b) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well organized distribution system for the availability and sale of new motor vehicles throughout the state; provides a network of quality warranty and repair facilities to maintain those vehicles; and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.

(c) It is the intent of this act to ensure fair competition among new motor vehicle dealer franchisees that are independently owned and those owned by their franchisors, and to clarify that the prohibition under existing law against franchisor ownership of a dealership located within a 10-mile radius of a nonfranchisor-owned dealership of the same line-make is subject only to certain limited exceptions that may not be used to justify any improper purpose, including the consolidation of privately owned dealerships by a sophisticated investor or operator posing as a dealer development candidate.

SEC. 2. Section 11713.3 of the Vehicle Code is amended to read:

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the

dealer in reliance upon the personal qualifications of such person or persons.

(d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

(i) The proposed transferee's name and address.

(ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.

(iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.

(B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an

issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the

dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(*l*) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor or any entity that controls or is controlled by, a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period. The board shall extend the time period until December 31, 2002, for any manufacturer that meets all of the following requirements:

(i) The manufacturer has no more than 25 franchisees in the state and those franchisees collectively operate dealership facilities in at least 15 counties of the state.

(ii) All of the dealership facilities operated by the manufacturer's franchisees in the state trade exclusively in the manufacturer's line-make.

(iii) No fewer than one-half of the manufacturer's franchisees in the state own and operate two or more dealership facilities in their assigned areas of responsibility.

(iv) The manufacturer holds a temporary ownership interest in no more than two dealerships in the state that are located in the relevant market area of any other franchisee of the same line-make not owned, in whole or part, by the manufacturer.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) Every manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.

(B) Every manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a ''family member'' means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a

written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) (1) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to the following:

(A) The furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch or distributor any of the following:

(i) Any vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and any part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) Any vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including time of delivery after placement of order. Differences in delivery terms due to geographic distances or other factors beyond the control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) Any information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of any franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of any dealer customer, and any other information which if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) As used in this section, ''area of responsibility'' is a geographic area specified in a franchise that is used by the franchisor for the purpose

of evaluating the franchisee's performance of its sales and service obligations.

SEC. 2.5. Section 11713.3 of the Vehicle Code is amended to read:

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

(i) The proposed transferee's name and address.

(ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.

(iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.

(B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or

representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(*l*) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor or any entity that controls or is controlled by, a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period. The board shall extend the time period until December 31, 2002, for any manufacturer that meets all of the following requirements:

(i) The manufacturer has no more than 25 franchisees in the state and those franchisees collectively operate dealership facilities in at least 15 counties of the state.

(ii) All of the dealership facilities operated by the manufacturer's franchisees in the state trade exclusively in the manufacturer's line-make.

(iii) No fewer than one-half of the manufacturer's franchisees in the state own and operate two or more dealership facilities in their assigned areas of responsibility.

(iv) The manufacturer holds a temporary ownership interest in no more than two dealerships in the state that are located in the relevant market area of any other franchisee of the same line-make not owned, in whole or part, by the manufacturer.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) Every manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.

(B) Every manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in Section 18009.3 of the Health and Safety Code, that is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation,

partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a ''family member'' means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) (1) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to, the following:

(A) The furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch or distributor of any of the following:

(i) Any vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and any part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) Any vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including time of delivery after placement of order. Differences in delivery terms due to geographic distances or other factors beyond the control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) Any information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of any franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of any dealer customer, and any other information which if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) As used in this section, ''area of responsibility'' is a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee's performance of its sales and service obligations.

SEC. 2.7. Section 2.5 of this bill incorporates amendments to Section 11713.3 of the Vehicle Code proposed by both this bill and AB 1912. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11713.3 of the Vehicle Code, and (3) this bill is enacted after AB 1912, in which case Section 2 of this bill shall not become operative.

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 790

An act to add and repeal Division 10.5 (commencing with Section 12200) of the Public Resources Code, relating to forest resources.

[Approved by Governor September 27, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Division 10.5 (commencing with Section 12200) is added to the Public Resources Code, to read:

DIVISION 10.5. CALIFORNIA FOREST LEGACY PROGRAM ACT OF 2000

CHAPTER 1. GENERAL PROVISIONS

Article 1. Title

12200. This division shall be known and may be cited as the California Forest Legacy Program Act of 2000.

Article 2. Findings and Declarations

12210. The Legislature hereby finds and declares all of the following:

(a) Privately owned forest lands comprise nearly half of California's 32.6 million acres of forest land, and include some of the state's most important and productive forest resources, including timber, fish and wildlife habitat, and watersheds. It is in the interest of the state to provide a favorable climate for long-term investment in forest resources.

(b) The importance of private forest lands to California's economy and environment has been recognized for many years, and more recently for almost three decades by the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4), the California Timber Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code), and other statutes and policies.

(c) California's private forest lands and woodlands are threatened by continued population growth and changes in land use patterns, including parcel size reductions, residential and commercial development, and by changes in forest cover.

(d) Heirs of forest landowners frequently find it necessary to harvest their timber prematurely and excessively, in order to pay estate taxes that can account for up to 55 percent of an estate's value.

(e) Continuing statewide population growth, existing land use and tax policies, regulations, and other factors create significant pressure for an increase in development conversions in forest lands of environmental and economic significance.

(f) Conservation easements have been successfully used around the United States to achieve voluntary protection of open space, historical sites, and natural and aquatic resources.

(g) Conservation easements enable landowners to receive financial benefits for voluntarily restricting specific development rights and land that, in turn, contributes to the conservation of natural resources for future generations. Financial benefits to landowners can be realized though a sale or donation, or a combination of both a sale or donation, or a conservation easement.

(h) A program to encourage and make possible the long-term conservation of forest lands and all associated natural resources is a necessary part of the state's land protection policies and programs, and it is in the public interest to expend money for that purpose.

(i) Funding is a necessary component of this program.

(j) The federal Forest Legacy Program (16 U.S.C. Sec. 2103c) conserves forestland threatened with conversion and development by providing federal matching funds for the acquisition of conservation easements or other interests in land from willing landowners, subject to state guidelines.

(k) The state completed the ''California Forest Legacy Program Assessment of Need'' in 1995 following an extensive analysis and widespread public input. That assessment was submitted to and accepted by the United States Department of Agriculture.

12211. It is the intent of the Legislature, in enacting this division and the California Forest Legacy Program, to protect forest lands and aquatic resources in California by focusing on all of the following priorities:

(a) Encouraging the long-term conservation of productive forest lands by providing an incentive to owners of private forest lands to prevent future conversions of forest land and forest resources.

(b) Protection of wildlife habitat, rare plants, and biodiversity.

(c) Maintenance of habitat connectivity and related values needed to ensure the viability of wildlife populations across landscapes and regions.

(d) Protection of riparian habitats, oak woodlands, ecological old growth forests, and other key forest types and seral stages that are poorly represented across landscapes and regions, and that play a key role in supporting biodiversity.

(e) Protection of water quality, fisheries, and water supplies.

(f) Maintenance and restoration of natural ecosystem functions.

(g) Encouraging improvements to enhance long-term sustainable forest uses while providing forest areas with increased protection against other land uses that conflict with forest uses.

Article 3. Definitions

12220. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

(a) ''Applicant'' means a landowner who is eligible for cost-sharing grants pursuant to the federal Forest Legacy Program (16 U.S.C. Sec. 2103 et seq.) or who is eligible to participate in the California Forest Legacy Program and the operation of the program, with regard to that applicant, does not rely on federal funding.

(b) ''Biodiversity'' is a component and measure of ecosystem health and function. It is the number and genetic richness of different individuals found within the population of a species, of populations found within a species range, of different species found within a natural community or ecosystem, and of different communities and ecosystems found within a region.

(c) ''Board'' means the State Board of Forestry and Fire Protection.

(d) ''Conservation easement'' has the same meaning as found in Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(e) ''Conversions'' is a generic term for situations in which forest lands become used for nonforest uses, particularly those uses that alter the landscape in a relatively permanent fashion.

(f) ''Department'' means the Department of Forestry and Fire Protection and ''Director'' means the Director of Forestry and Fire Prevention.

(g) ''Forest land'' is land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.

(h) ''Landowner'' means an individual, partnership, private, public, or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own private forest lands or woodlands.

(i) ''Local government'' means a city, county, district, or city and county.

(j) ''Nonprofit organization'' means any qualified land trust organization, as defined in Section 170(h)(3) of Title 26 of the United

States Code, that is organized for one of the purposes of Section 170(b)(1)(A)(vi) or 170(h)(3) of Title 26 of the United States Code, and that has, among its purposes, the conservation of forest lands.

(k) ''Program'' means the California Forest Legacy Program established under this division.

(*l*) ''Woodlands'' are forest lands composed mostly of hardwood species such as oak.

Article 4. Administration

12230. The department shall carry out the California Forest Legacy Program. Nothing in this division alters the department's responsibility for the administration of state, federal, or private funds that are allocated for the purpose of protecting private forest lands and all associated natural resources.

12231. Nothing in this chapter grants any new authority to the department to affect local policy or land use decisionmaking.

Chapter 2. California Forest Legacy Program

12240. The California Forest Legacy Program is hereby established. The department may acquire conservation easements by entering into a contract with the Wildlife Conservation Board to administer the purchase of conservation easements. The California Forest Legacy Program may also include those activities eligible for funding under the federal Forest Legacy Program (16 U.S.C. Sec. 3103c), and the state program shall be coordinated with the federal program to the maximum amount possible.

12241. Money to fund the California Forest Legacy Program shall be obtained from gifts, donations, federal grants and loans, other appropriate funding sources, and from the sale of general obligation bonds pursuant to the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act) (Chapter 1.692 (commencing with Section 5096.300) of Division 5) and made available for appropriation pursuant to paragraph (4) of subdivision (a) of Section 5096.350.

12242. The implementation of the program includes the costs associated with the purchase or facilitated donation of conservation easements, technical assistance provided by the department, technology transfer activities of the department, and administrative costs incurred by the department in administering the program.

12244. Easements acquired under this program may be held by federal, state, or local government entities or by nonprofit land trust

organizations. The director shall find that any recipient of a conservation easement is qualified to monitor and enforce the terms of the easement.

12245. The director shall not disburse any funds until the applicant agrees to both of the following:

(a) That any conservation easement acquired shall be used by the applicant only for the purpose for which the funds were requested.

(b) That the director shall find that any disposition of the easement is consistent with, and in furtherance of, the purposes of this division, that the recipient of the easement is qualified to monitor and enforce the easement, and that the conservation provisions of the easement remain in effect following the transfer.

12246. If a local, state, or national government agency or nonprofit land trust organization holding the easement is dissolved, the easement shall be transferred to an appropriate public or nonprofit land trust organization that is qualified to monitor and enforce the easement.

12247. The easement, or any of its terms, may only be amended with the consent of all of the necessary parties to the easement. The department shall determine that the amendment is consistent with this division.

12248. The director shall not disburse any funds unless the applicant agrees to restrict the use of the land in perpetuity.

12249. The board shall adopt rules and regulations for the implementation of this division, including the standards, criteria, and requirements necessary for acquiring conservation easements.

12249.5. Rules or regulations adopted by the board pursuant to this section shall be adopted 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).

12249.6. The department shall review, and approve or disapprove, applications from landowners for the acquisition of conservation easements on forest lands or woodlands.

CHAPTER 3. ELIGIBILITY CRITERIA

12250. Every application for the acquisition of a conservation easement shall provide sufficient information to enable the department to verify the parcel's eligibility for the program and to understand the conservation objectives and the parcel's environmental value or potential to protect forest and aquatic resources.

12250.5. In reviewing applications pursuant to this division, the department shall determine whether the proposed conservation easement meets the eligibility and selection criteria set forth in this chapter and conforms with any rules or regulations adopted by the department pursuant to this chapter.

12251. Proposed conservation easements shall meet the eligibility criteria set forth in this section prior to review pursuant to the selection criteria set forth in Section 12260. To be eligible for participation, private forest land parcels proposed for protection under the program shall comply with all of the following:

(a) Be subject to potential conversion.

(b) Be owned by landowners who are willing and interested in selling or donating conservation easements.

(c) Be forested with at least 10-percent canopy cover by conifer or hardwood species, or be capable of being so forested under natural conditions.

(d) Possession of one or more environmental values of great concern to the public and the state:

(1) Important fish and wildlife habitat.

(2) Areas that can help maintain habitat connectivity across landscapes.

(3) Rare plants.

(4) Biodiversity.

(5) Riparian habitats.

(6) Oak woodlands.

(7) Ecological old growth forests.

(8) Other key forest types and seral stages that are poorly represented across California.

(9) Lands that directly affect water quality and other watershed values.

(e) Provision for continuity of one or more traditional forest uses, such as commodities production or habitat maintenance.

(f) Possession of environmental values that can be protected and managed effectively through conservation easements at reasonable costs.

12252. The easement shall not be required as a condition of any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, mitigating the significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or pursuant to an approved environmental impact statement or a finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C.A. Sec. 4321 et seq.) or the federal Endangered Species Act of 1973 (15 U.S.C.A. Sec. 1531 et seq.).

CHAPTER 4. SELECTION CRITERIA AND PROCESS

12260. If the department determines that the proposed conservation easement meets the eligibility criteria set forth in Section 12251, the application shall be reviewed based upon the extent to which it satisfies the following selection criteria:

(a) The nature of the environmental values proposed for protection, and whether they can be monitored efficiently and effectively.

(b) Whether the parcels are likely to become isolated from other areas maintained for key forest resources by development on adjacent parcels.

(c) Whether the landowner's management goal for his or her parcel is compatible with the resource protections he or she is proposing.

(d) Whether the landowner has developed, or commits to developing by the time the easement is finalized, a management plan equivalent to, or better than, a forest stewardship plan that governs management on the parcel.

(e) Whether a nonprofit land trust organization, public agency, or other suitable organization has expressed an interest in working with the department and the landowner to establish, hold, and monitor the easement.

(f) Whether other sources of funding for easement acquisition, closing costs monitoring, and other costs, are available.

(g) Other relevant considerations established by the director.

12262. An applicant shall select and retain an independent real estate appraiser to determine the value of the conservation easement, which shall be calculated by determining the difference between the fair market value and the restricted value of the property.

12263. The department shall act on an application for the acquisition of a conservation easement within 180 days of its receipt, and shall notify the applicant in writing of approval or disapproval of the application within 10 days of the decision of the department. The written notice regarding a disapproval decision shall state the reason for the disapproval of the application.

12264. The department may disapprove the application for the acquisition of a conservation easement in any of the following circumstances:

(a) The application does not satisfy the eligibility criteria set forth in Section 12251 or selection criteria set forth in Section 12260.

(b) Clear title to the conservation easement cannot be conveyed.

(c) There is insufficient money in the fund to carry out the acquisition.

(d) Other acquisitions have a higher priority.

(e) Other relevant considerations established by the director.

CHAPTER 5. EASEMENT MONITORING AND MANAGEMENT

12275. The department, local government entity, or nonprofit land trust organization acquiring an easement pursuant to this division shall monitor that easement in order to assess the condition of the resources being protected and to ensure that the terms of the easement are being followed. Entities acquiring easements may also enter into a cooperative agreement with another qualified entity to monitor the easement.

12276. The department shall ensure that any entity acquiring a conservation easement acquired pursuant to this division has adequate funding for, or otherwise adequately provides for, easement monitoring pursuant to this division, and is able to enforce the easement if its provisions are not satisfied.

CHAPTER 6. MISCELLANEOUS PROVISIONS

12290. Commencing on January 1, 2002, and each January 1 thereafter, the department shall report to the Governor and the Legislature on its implementation of this division during the preceding calendar year. The report shall include, but not be limited to, information concerning applications made pursuant to this division, participating landowners, easement holders under Section 12244, and a description of all easements purchased.

12291. This division 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. Notwithstanding the repeal of Division 10.5 (commencing with Section 12200) of the Public Resources Code on January 1, 2007, by Section 12291 of the Public Resources Code, the Department of Forestry and Fire Protection shall do both of the following:

(a) Provide for monitoring of conservation easements purchased pursuant to former Division 10.5 (commencing with Section 12200) of the Public Resources Code in order to assess the condition of resources being protected, and to ensure that the terms of the easement are being met pursuant to a given conservation easement.

(b) Annually report to the Governor and the Legislature by January 1 of each year on the number of easements purchased pursuant to former Division 10.5 (commencing with Section 12200) of the Public Resources Code, and a description of those easements.

CHAPTER 791

An act to amend Sections 185020 and 185032 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 185020 of the Public Utilities Code is amended to read:

185020. (a) There is in state government a High-Speed Rail Authority.

(b) (1) The authority is composed of nine members as follows:

(A) Five members appointed by the Governor.

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

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

(2) For the purposes of making appointments to the authority, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall take into consideration geographical diversity to ensure that all regions of the state are adequately represented.

(c) Except as provided in subdivision (d), and until their successors are appointed, members of the authority shall hold office for terms of four years. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) (1) On and after January 1, 2001, the terms of all persons who are then members of the authority shall expire, but those members may continue to serve until they are reappointed or until their successors are appointed. In order to provide for evenly staggered terms, persons appointed or reappointed to the authority after January 1, 2001, shall be appointed to initial terms to expire as follows:

(A) Of the five persons appointed by the Governor, one shall be appointed to a term which expires on December 31, 2002, one shall be appointed to a term which expires on December 31, 2003, one shall be appointed to a term which expires on December 31, 2004, and two shall be appointed to terms which expires on December 31, 2005.

(B) Of the two persons appointed by the Senate Committee on Rules, one shall be appointed to a term which expires on December 31, 2002, and one shall be appointed to a term which expires on December 31, 2004.

(C) Of the two persons appointed by the Speaker of the Assembly, one shall be appointed to a term which expires on December 31, 2003,

and one shall be appointed to a term which expires on December 31, 2005.

(2) Following expiration of each of the initial terms provided for in this subdivision, the term shall expire every four years thereafter on December 31.

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

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

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

(h) The authority is terminated on December 31, 2003, unless the Legislature, through the enactment of a statute on or before that date, repeals this provision or provides for a different termination date.

SEC. 2. Section 185032 of the Public Utilities Code is amended to read:

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

(2) The authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in this state is exclusively granted to the authority.

(3) Except as provided in paragraph (2), nothing in this subdivision precludes other local, regional, or state agencies from exercising powers provided by law with regard to planning or operating, or both, passenger rail service.

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

CHAPTER 792

An act to add Article 3 (commencing with Section 104200) to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, relating to cancer.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Article 3 (commencing with Section 104200) is added to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, to read:

Article 3. Cancer Awareness

104200. (a) The department shall conduct the Cervical Cancer Community Awareness Campaign to do all of the following:

(1) To provide awareness, assistance, and information regarding cervical cancer.

(2) To promote the availability of preventive treatment for cervical cancer for women in California.

(3) To perform other activities related to cervical cancer.

(b) (1) For purposes of the Cervical Cancer Community Awareness Campaign, the department shall establish a study of and research regarding cervical cancer.

(2) The study and research shall contain, but not be limited to, statistical information in order to target appropriate regions of the state with the Cervical Cancer Community Awareness Campaign. The statistical information shall include, but not be limited to, age, ethnicity, region, and socioeconomic status of the women in the state in relation to cervical cancer. The research shall provide studies of current treatment evolutions, possible cures, and the availability of preventive care for women in the state in relation to cervical cancer.

(c) The department shall adopt regulations to implement the Cervical Cancer Awareness Campaign.

(d) To the extent feasible and appropriate, the Cervical Cancer Community Awareness Campaign shall be incorporated into existing cancer awareness programs operated by the department.

(e) The Cervical Cancer Community Awareness Campaign shall not be implemented unless and until funds are appropriated for that purpose in the annual Budget Act.

(f) There is hereby established in the State Treasury the Cervical Cancer Fund to be expended by the State Department of Health Services, upon appropriation by the Legislature, for the Cervical Cancer Community Awareness Campaign.

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CHAPTER 793

An act to add Chapter 17 (commencing with Section 53080) to Part 28 of the Education Code, relating to school-to-career programs, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

I am signing Assembly Bill 1873 but with a reduction in the appropriation from $5 million General Fund to $2 million General Fund.

This bill would appropriate $5 million from the General Fund to award local School-to-Career partnerships through a competitive grant process.

This program, while meritorious, should appropriately be shouldered by the non-profit and private sectors. I expect the non-profit and private sectors to exceed this amount in matching funds between now and June 30, 2001. If they do not, I will not continue allocating funds toward this program.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 17 (commencing with Section 53080) is added to Part 28 of the Education Code, to read:

CHAPTER 17. SCHOOL-TO-CAREER INITIATIVES

53080. The Legislature hereby finds and declares all of the following:

(a) California must make more efficient use of limited resources to do a better job of preparing pupils for an economy that demands that workers have strong academic and career knowledge and skills, are adaptable to change, and are prepared for lifelong learning.

(b) The rapid growth of California's population and the labor force requires special efforts to attract, support, and retain businesses that pay high wages to highly skilled workers. Therefore, improvement in the overall quality of the workforce is a vital component of economic development of California.

(c) California is experiencing a growing inequality in income distribution at a time when the state's economy is strong, illustrating that economic growth alone cannot be relied upon to help improve this income gap. Therefore, California must develop and sustain educational programs that can provide youths with career guidance, organizational help in developing careers, and networks of support that will serve as the foundation for lifelong learning.

(d) The current array of educational and training programs needs to continue to move towards a more coherent system based on public-private collaboration and cooperation.

(e) The policies and methods through which California provides education to prepare all young people for lifelong learning, higher education, and highly skilled careers that are highly paid may be the most important component of California's economic growth.

(f) Sustaining and further developing a strong school-to-career system needs to be the top priority in establishing the most efficient and effective educational system and in establishing a seamless system of lifelong education and employment for all Californians.

(g) California's school-to-career system will be a long-term investment in supplying a highly skilled adaptable workforce. By successfully matching the skills of the emerging workforce with the needs of California's growing economy, the school-to-career system will be one of the most essential components to ensuring the state's competitive edge in an increasingly global economy.

(h) School-to-career programs are an educational approach that is designed to improve academic rigor through relevant, real-world experiences by integrating school-based and work-based learning with the formal academic curriculum. School-to-career programs create a much needed nexus between those preparing the future workforce and those employing the future workforce, enabling and encouraging the use of contextual, applied teaching strategies, and providing opportunities for all students to gain exposure to career-related coursework, workplace experiences, internships, and job-site mentoring. A school-to-career system establishes much needed cohesion, coherence, and infrastructure to the kindergarten through postsecondary school system by integrating and building on existing educational programs such as vocational education programs, partnership academies, regional occupational centers and programs, youth apprenticeship programs, and adult education programs. School-to-career programs use the resources of business and the expertise of the educational community to provide a more successful learning environment for all students. School-to-career programs will enable all pupils to earn transferable credentials, prepare them for jobs in highly skilled careers that are highly paid, and increase their opportunities for further education, including four-year colleges and universities.

53081. (a) The Office of the Secretary for Education, the State Department of Education, the Chancellor's Office of California Community Colleges, and the Health and Human Services Agency shall enter into an interagency agreement to establish the Interagency Partnership for School-to-Career Programs. The Interagency

Partnership for School-to-Career Programs shall administer and serve the following roles:

(1) Develop or participate in the development of accountability measurements specified in paragraph (7) of subdivision (b) of Section 53082 for school-to-career programs to ensure that the goals of the program are being met.

(2) Award grants to eligible applicants that meet or exceed the criteria specified in subdivision (b) of Section 53082.

(3) Report to the Governor and the Legislature by January 30, 2002, on school-to-career performance outcomes specified in subdivision (b) of Section 53082.

(4) Provide technical and professional assistance to all local partnerships.

(5) Consult and offer advice to partnerships.

(6) Provide an informational link where local partnerships can collaborate and exchange successful and innovative methods and ideas.

(b) No more than 10 percent of the available funds for the purposes of this chapter shall be available for the administrative costs of the Interagency Partnership for School-to-Career Programs.

53082. (a) (1) For purposes of this chapter, ''local partnership'' means a defined system designed to deliver the school-to-career programs funded pursuant to this chapter. A local partnership may include, but is not limited to, a collaborative effort between educators, employers, local government entities, and the public.

(2) For purposes of this chapter, ''local partnership geographic area'' means the geographic area that an established local partnership is designed to serve.

(b) To be eligible for a grant pursuant to this chapter, a local entity shall, in the grant application, submit a detailed plan demonstrating the following:

(1) All pupils shall be eligible and have access to the activities developed in the geographic region. ''All pupils'' means every pupil, including, but not limited to, pupils who are college bound, at high risk, disabled pupils, special education pupils, male and female pupils pursuing nontraditional careers, gifted pupils, pupils with limited English proficiency, and those who are economically disadvantaged.

(2) The ability to leverage funds and contributions from public and private entities, including, but not limited to, the Improving America's Schools Act of 1994 (20 U.S.C. Sec. 6301), Carl Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. Sec. 2301, and the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801).

(3) The ability to build on and integrate other beneficial workforce development and educational programs currently operating in the state, including, but not limited to, tech prep programs as provided through the

Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 (105 P.L. 332), Partnership Academies established pursuant to Article 5 (commencing with Section 54690) of Chapter 9 of Part 29, Regional Occupational Centers and programs established pursuant to Article 1 (commencing with Section 52300) of Chapter 9, Project WorkAbility conducted pursuant to Article 3 (commencing with Section 56470) of Chapter 4.7 of Part 30, youth apprenticeship programs, and adult education programs.

(4) The ability to provide school-based learning, work-based learning, and service learning at an appropriate level for that local partnership geographic area.

(5) A significant level of participation and contributions from business and organized labor, including, but not limited to, internal school-to-career coordinator salaries, pupil wages in paid work-based learning, supplies, and equipment necessary for relevant school-to-career activities.

(6) The ability to be as inclusive as possible and engage all interested, appropriate, and relevant parties in the activities of the local partnership. The local partnership shall demonstrate participation from representatives of local education agencies, representatives of local postsecondary educational institutions, representatives of local vocational education schools, local educators, parent organizations, employers, employer organizations, and organized labor. The Interagency Partnership for School-to-Career Programs may, as it deems necessary, require additional participation from other parties including, but not limited to, community-based organizations, national trade associations, industrial extension centers, rehabilitation agencies and organizations, proprietary institutions of higher education, local government agencies, parent organizations, teacher organizations, private industry councils, and federally recognized Native American tribes and Native American organizations.

(7) Accountability measurements shall demonstrate increased academic performance, postsecondary enrollment, decreased dropout rates, transition to appropriate employment, apprenticeship, or any other job training school when applicable, and measurements of pupil, parent, and employer satisfaction.

53083. (a) Funds for school-to-career programs shall be distributed through the Interagency Partnership for School-to-Career Programs to local partnerships for the purposes specified in subdivision (e).

(b) Funds shall be awarded through a competitive grant process where only one local partnership can receive funds for a geographic area.

(c) Funds shall be awarded to local partnerships that demonstrate gains in accountability measurements specified in paragraph (7) of subdivision (c) of Section 53082.

(d) The Interagency Partnership is not required to fund a geographic area if the Interagency Partnership concludes that no grant application satisfactorily meets the requirements specified in paragraphs (1) to (7), inclusive, of subdivision (b) of Section 53082.

(e) Funds received through the grant process shall be used to perform the critical functions of convening, connecting, measuring, and brokering specific services that serve to build a locally defined system that provides the connections between educators, employers, local government, and the community to improve public education for all pupils in the defined geographic area. Funds may be used for the following connecting activities:

(1) Matching pupils with work-based opportunities.

(2) Using schoolsite mentors as liaisons between educators, business, parents, and community partners.

(3) Providing technical assistance to help employers and educators design comprehensive school-to-career systems.

(4) Providing technical assistance to help teachers integrate school- and work-based learning as well as academic and occupational subject matter.

(5) Encouraging active business involvement in school- and work-based activities.

(6) Assisting pupils in finding appropriate work, continuing their education or training, and linking them to other community services.

(7) Evaluating post-program outcomes to assess program success, particularly with reference to selected populations.

(8) Linking existing youth development activities with employer and industry strategies to upgrade worker skills.

53084. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Secretary for Education for the purposes set forth in this chapter.

CHAPTER 794

An act to amend Section 101230 of the Health and Safety Code, relating to public health administration, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

I am signing Senate Bill No. 269 with a reduction. This bill would set a funding allocation methodology for local communicable disease control and public health surveillance activities which are important public health functions. I included $1.6 million in the Budget Act of 2000 for local public health activities. Therefore, I am reducing the

appropriation from $4.9 million to $1 million to be allocated on a proportional basis according to the formula in the bill.

GRAY DAVIS, Governor

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

SECTION 1. (a) This act shall be known and may be cited as the ''Public Health Improvement Act of 1999.''

(b) The Legislature finds and declares as follows:

(1) Local control of communicable diseases is a well recognized core public health function, comparable to the public safety mission of law enforcement.

(2) The tools to battle communicable diseases are well known and time honored. These tools involve basic prevention, identification, and control efforts that result in a benefit to all in society. These tools include disease surveillance systems, diagnostic capabilities, disease intervention, health education, and a broad disease prevention program.

(3) Local communicable disease control surveillance and reporting activities are the backbone of the state's communicable disease control efforts. Without an effective local reporting and surveillance system, control of communicable disease is not possible in California.

(4) The local reporting and surveillance system is severely strained and underfunded. Scientific and professional capacity has not grown with the state's increasing population and complexity of problems. There are many instances where key medical and public health laboratory personnel have been reduced in local health departments.

(5) The number of infectious diseases newly emerging or reemerging in California has increased sharply in just the past few years. Diseases including bloody diarrhea due to E. Coli 0157:H7, hantavirus pulmonary syndrome, Cyclospora, egg-associated salmonellosis, and bacterial infections resistant to all antibiotics have appeared within the last three years, in addition to the eight new sexually transmitted diseases recognized since 1980. Multiple drug resistant TB, and valley fever have reemerged as major health threats.

(6) The federal Centers of Disease Control and Prevention and the United States Food and Drug Administration have both urged state action as a critical part of their emerging pathogens prevention strategy. The FDA has pointed out that only two states, Minnesota and Washington, are well prepared to identify and manage E. Coli 0157:H7 outbreaks. In fact, despite sporadic cases in contiguous California counties, it was Washington state that alerted California about the recent multistate outbreak initially attributed to raw apple juice.

(7) A joint survey of local health departments conducted by the California Conference of Local Health Officers and the State Department of Health Services in 1998 determined that over 22 million

dollars ($22,000,000) would have to be spent on basic scientific personnel to fill this gap in the capability to control and prevent the spread of disease.

(8) In 1947, the Legislature allotted 3 million dollars ($3,000,000) to local health jurisdictions for the basic core disease prevention services. The current amount is seven hundred eight thousand dollars ($708,000). As a result, basic public health programs, such as communicable disease control and disease surveillance, have eroded.

(9) Rural county health jurisdictions in California have a unique and chronic need for additional resources to provide basic disease prevention services. Rural health agencies currently operate under tightly constrained budgets. Nonetheless, rural health agencies are responsible for controlling infectious outbreaks covering vast geographic distances where accessible health facilities are few and far apart. Rural health agencies are under pressure from the special needs of resident populations and from the increasingly large demands placed upon rural health agencies by tourists and visitors to California's great natural or scenic recreational areas.

(c) (1) It is therefore the intent of the Legislature that local geographically based prevention services be strengthened and enhanced in California to provide for communicable disease control and community health surveillance activities.

(2) It is the further intent of the Legislature that, in conjunction with a proposal to enhance funding for an emerging infectious disease program at the state level, that the Legislature seek to enhance and strengthen the capability of local health jurisdictions to form a state-local system to control communicable disease and to closely monitor the health status of the state's population.

SEC. 2. Section 101230 of the Health and Safety Code is amended to read:

101230. From the appropriation made for the purposes of this article, allocation shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185 in the following manner:

(a) A basic allotment as follows:

To the administrative bodies of local health jurisdictions a basic allotment of one hundred thousand dollars ($100,000) per local health jurisdiction or $0.212426630 per capita, whichever is greater, subject to the availability of funds appropriated in the annual Budget Act or some other act. The population estimates used for the calculation of the per capita allotment shall be based on the Department of Finance's E-1 Report, ''City/County Population Estimates with Annual Percentage Changes'' as of January 1 of the previous fiscal year. However, if within a county there are one or more city health jurisdictions, the county shall

subtract the population of the city or cities from the county total population for purposes of calculating the per capita total. If the amounts appropriated are insufficient to fully fund the allocations specified in this subdivision, the State Department of Health Services shall prorate and adjust each local health jurisdiction's allocation using the same percentage that each local health jurisdiction's allocation represents to the total appropriation under the allocation methodology specified in this subdivision.

(b) A per capita allotment, determined as follows:

After deducting the amounts allowed for the basic allotment as provided in subdivision (a), the balance of the appropriation, if any, shall be allotted on a per capita basis to the administrative body of each local health jurisdiction in the proportion that the population of that local health jurisdiction bears to the population of all qualified local health jurisdictions of the state.

(c) Beginning in the fiscal year 1998–99, funds appropriated for the purposes of this article shall be used to supplement existing levels of the services described in paragraphs (1) and (2) of subdivision (d) provided by qualifying participating local health jurisdictions. As part of a county's or city's annual realignment trust fund report to the Controller, a participating county or city shall annually certify to the Controller that it has deposited county or city funds equal to or exceeding the amount described in subdivisions (a) and (b) of Section 17608.10. The county or city shall not be required to submit any additional reports or modifications to existing reports to document compliance with this subdivision. Funds shall be disbursed quarterly in advance to local health jurisdictions beginning July 1, 1998. If a county or city does not accept its allocation, any unallocated funds provided under this section shall be redistributed according to subdivision (b) to the participating counties and cities that remain.

(d) Funds shall be used for the following:

(1) Communicable disease control activities. Communicable disease control activities shall include, but not be limited to, communicable disease prevention, epidemiologic services, public health laboratory identification, surveillance, immunizations, followup care for sexually transmitted disease and tuberculosis control, and support services.

(2) Community and public health surveillance activities. These activities shall include, but not be limited to, epidemiological analyses, and monitoring and investigating communicable diseases and illnesses due to other untoward health events.

(e) Funds shall not be used for medical services, including jail medical treatment, except as provided in subdivision (d).

SEC. 3. (a) The sum of four million nine hundred thirty-five thousand dollars ($4,935,000) is hereby appropriated from the General

Fund to the State Department of Health Services for allocation to administrative bodies of qualifying local health jurisdictions for purposes of implementing Section 101230 of the Health and Safety Code.

(b) (1) Notwithstanding subdivision (a) of Section 101230 of the Health and Safety Code, the funds shall be allocated so that each jurisdiction receives one hundred thousand dollars ($100,000) or its allocation for the 1999–2000 fiscal year, whichever is greater.

(2) Notwithstanding paragraph (1), if the funds appropriated are insufficient to completely implement paragraph (1), allocations shall be made pursuant to this paragraph. In the first instance, no jurisdiction shall receive less than its allocation for the 1999–2000 fiscal year. Secondly, for those jurisdictions for which the allocation pursuant to paragraph (1) would have been less than one hundred thousand dollars ($100,000), the allocation shall be reduced proportionately, by dividing the number of those jurisdictions by the funds remaining after the minimum allocations to all jurisdictions are made under this paragraph.

CHAPTER 795

An act to amend Section 11006.2 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(1) California welfare recipients are in the process of making the transition from welfare into the paid labor market.

(2) Part of this transition should include participation in the economic mainstream by having the choice to establish banking relationships.

(b) It is the intent of the Legislature to assist welfare recipients in this transition by reducing the barriers to full participation in the banking system. It is the intent of the Legislature that this act address and eliminate one of those barriers.

SEC. 2. (a) The Legislature finds and declares:

(1) Many California banks offer low- or no-cost accounts for customers who make their deposit through direct deposit.

(2) Direct deposit is widely offered by many private and public employers and utilized by many employees because of its convenience, reliability, and low cost.

(3) This option is not currently available to most California public assistance recipients.

(b) It is the intent of the Legislature in enacting this act, to provide public assistance recipients an option to have their monthly cash benefits deposited into a bank account.

SEC. 3. Section 11006.2 of the Welfare and Institutions Code is amended to read:

11006.2. (a) The department may provide for the delivery of public assistance payments at any time during the month consistent with federal law relating to recipient monthly reporting requirements.

(b) The department shall cooperate with county treasurers and private financial service providers, including depository institutions, licensed check sellers, data processing service vendors, and retail merchants, in developing and implementing an electronically based system for delivering public assistance payments to those recipients who do not have individual deposit accounts with financial institutions.

(c) (1) Notwithstanding any other provision of law, any person entitled to the receipt of public assistance payments may authorize payment to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established by the county treasurer. The direct deposit shall discharge the department's obligation with respect to the payment.

(2) Each county treasurer shall make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and shall, by December 1, 2001, establish a program for the direct deposit by electronic fund transfer of payments to any person entitled to the receipt of public assistance benefits who authorizes the direct deposit thereof into the person's account at the financial institution of his or her choice.

(3) This subdivision shall apply in each county that offers a program for direct deposit by electronic funds transfer to some or all of its employees.

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

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 796

An act to amend Sections 109890, 109925, 110025, 110110, 110405, 111330, 111355, 111490, and 111610 of, to add Section 110111 to, and to repeal Sections 110305, 111350, 111405, and 111410 of, the Health and Safety Code, relating to food and drugs.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 109890 of the Health and Safety Code is amended to read:

109890. ''Antibiotic drug'' means any drug , except drugs for use in animals other than humans, composed in whole or in part of any form of penicillin, streptomycin, chlortetracycline chloramphenicol, bacitracin, or any other drug intended for human use containing any quantity of any chemical substance that is produced by micro-organisms, and that has the capacity to inhibit or destroy micro-organisms in dilute solution, including a chemically synthesized equivalent, or any derivative thereof.

SEC. 2. Section 109925 of the Health and Safety Code is amended to read:

109925. ''Drug'' means any of the following:

(a) Any article recognized in an official compendium.

(b) Any article used or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or any other animal.

(c) Any article other than food, that is used or intended to affect the structure or any function of the body of human beings or any other animal.

(d) Any article used or intended for use as a component of any article designated in subdivision (a), (b), or (c) of this section.

The term ''drug'' does not include any device.

Any food for which a claim (as described in Sections 403(r)(1)(B) (21 U.S.C. Sec. 343(r)(1)(B)) and 403(r)(3) (21 U.S.C. Sec. 343(r)(3)) or Sections 403(r)(1)(B) (21 U.S.C. Sec. 343(r)(1)(B)) and 403(r)(5)(D) (21 U.S.C. Sec. 343(r)(5)(D)) of the federal act), is made in accordance with the requirements set forth in Section 403(r) (21 U.S.C. Sec. 343(r))

of the federal act, is not a drug under subdivision (b) solely because the label or labeling contains such a claim.

SEC. 3. Section 110025 of the Health and Safety Code is amended to read:

110025. (a) ''Substantial evidence'' means evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug or device involved, on the basis that it could be fairly and responsibly concluded by the experts that the drug or device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling, proposed labeling, or advertising of any drug or device.

(b) If the department determines, based on relevant science, that data from one adequate and well-controlled clinical investigation, and confirming evidence, obtained prior to or after the investigation, sufficiently establish effectiveness, then the department may consider that data and evidence, to constitute substantial evidence for purposes of the preceding sentence.

SEC. 4. Section 110110 of the Health and Safety Code is amended to read:

110110. (a) All regulations relating to (1) new drug applications, except for abbreviated new drug applications, adopted pursuant to Section 505 of the federal act (21 U.S.C. Sec. 355), (2) applications for premarket approval of new devices, adopted pursuant to Section 515 of the federal act (21 U.S.C. Sec. 360e), (3) postmarketing reports, recordkeeping, and other postapproval requirements for approved new drug applications or approved new device premarket approval applications, adopted pursuant to the federal act, that are in effect on January 1, 1993, or that are adopted on or after that date, shall be the new drug and new device application regulations of this state.

(b) The department may, by regulation, adopt any new drug or new device application regulation that it determines is necessary for the administration and enforcement of this part, whether or not the regulation is in accordance with the regulations adopted pursuant to the federal act.

SEC. 5. Section 110305 of the Health and Safety Code is repealed.

SEC. 6. Section 110405 of the Health and Safety Code is amended to read:

110405. An advertisement that is not unlawful under Section 110390 is not unlawful under Section 110403 if it is either one of the following:

(a) Disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the

purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of drugs or devices.

(b) An advertisement that a drug or device has a specific curative or therapeutic effect on a condition, disorder, or disease listed in Section 110403 if the drug or device is approved or cleared for marketing for that specific curative or therapeutic effect through any of the following means:

(1) A new drug application approved pursuant to Section 111500, or Section 505 of the federal act (21 U.S.C. Sec. 355).

(2) An abbreviated new drug application approved pursuant to Section 505 of the federal act (21 U.S.C. Sec. 355).

(3) A licensed biological product pursuant to Section 351 of the Public Health Service Act (42 U.S.C. Sec. 262).

(4) A nonprescription drug that meets the requirements of Part 330 of Title 21 of the Code of Federal Regulations.

(5) A new animal drug application approved under Section 512 of the federal act (21 U.S.C. Sec. 360b).

(6) An abbreviated new animal drug application approved pursuant to Section 512 of the federal act (21 U.S.C. Sec. 360b).

(7) A new device application approved pursuant to Section 111550.

(8) A device premarket approval application approved under Section 515 of the federal act (21 U.S.C. Sec. 360e).

(9) A determination of substantial equivalence for a device pursuant to Section 513(f)(1) of the federal act (21 U.S.C. Sec. 360c(i)).

SEC. 7. Section 111330 of the Health and Safety Code is amended to read:

111330. Any drug or device is misbranded if its labeling is false or misleading in any particular.

SEC. 8. Section 111350 of the Health and Safety Code is repealed.

SEC. 9. Section 111355 of the Health and Safety Code is amended to read:

111355. (a) Any drug is misbranded unless its label bears, to the exclusion of any other nonproprietary name except the applicable, systematic chemical name or the chemical formula, all of the following information:

(1) The established name of the drug, if any.

(2) If it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein.

(3) For nonprescription drugs, the quantity or proportion of each active ingredient and the established name of each inactive ingredient in accordance with Sections 502(e)(1)(A)(ii) and (iii) of the federal act (21 U.S.C. 352(e)(1)(A)(ii) and (iii)).

(b) The requirement for stating the quantity of the active ingredients of any drug, including the quantity or proportion of any alcohol, and also including, whether active or not, the quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein, shall apply to all drugs, including prescription drugs and nonprescription drugs. However, the requirement for declaration of quantity shall not apply to nonprescription drugs that are also cosmetics, as defined in Section 201(i) of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(i)) and that are labeled in compliance with federal labeling requirements concerning declaration of ingredients including active ingredients and also the quantity and proportion of any alcohol, except that the quantity or proportion of the following ingredients, whether active or not, shall be declared: bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein. The department may exempt any nonprescription drug from the requirement of stating the quantity of the active ingredients, other than those specifically named in this subdivision, upon a showing by the applicant through evidence satisfactory to the department that the granting of the exemption will not endanger the public health. For any prescription drug the established name of the drug or ingredient, as the case may be, on the label and on any labeling on which a name for the drug or ingredient is used shall be printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for the drug or ingredient.

The changes made in this section by Chapter 943 of the Statutes of 1978 shall not apply to any drug shipped by a manufacturer or packer to a retailer or wholesaler before January 1, 1980. Any such drugs so shipped shall comply with this section on and after January 1, 1981.

SEC. 10. Section 111405 of the Health and Safety Code is repealed.

SEC. 11. Section 111410 of the Health and Safety Code is repealed.

SEC. 12. Section 111490 of the Health and Safety Code is amended to read:

111490. (a) A drug or device that is subject to Section 111470 is misbranded if at any time prior to dispensing, its label fails to bear the statement ‘‘Caution: federal law prohibits dispensing without

prescription,'' or ''Caution: state law prohibits dispensing without prescription,'' or ''R_x only.'' A drug or device to which Section 111470 does not apply is misbranded if at any time prior to dispensing its label bears the caution statement or ''R_x only'' quoted in the preceding sentence.

(b) A device that is subject to Section 111470 is misbranded if, at any time prior to dispensing, its label fails to bear the statement ''Caution: federal law restricts this device to sale by or on the order of a ____ ,'' the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. A device to which Section 111470 does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

SEC. 13. Section 111610 of the Health and Safety Code is amended to read:

111610. Section 111550 does not apply to any of the following:

(a) A drug or device that is sold in this state, or introduced into interstate commerce, at any time prior to the enactment of the federal act, if its labeling and advertising contained the same representations concerning the conditions of its use.

(b) Any drug that is licensed under the Public Health Service Act of July 1, 1944 (58 Stats. 682, as amended; 42 U.S.C. Sec. 201 et seq.) or under the eighth paragraph of the heading of Bureau of Animal Industry of the act of March 4, 1913 (37 Stat. 832–833; 21 U.S.C. Sec. 151 et seq.), commonly known as the ''Virus-Serum-Toxin Act.''

SEC. 14. Section 110111 is added to the Health and Safety Code, to read:

110111. All nonprescription drug regulations and any amendments to those regulations adopted pursuant to the federal act, that are in effect on January 1, 2000, or that are adopted on or after that date, shall be the nonprescription drug regulations of the state. The department may adopt any nonprescription drug regulation it deems necessary for the administration and enforcement of this part, provided that the regulation is not different from, or in addition to, any requirement for nonprescription drugs pursuant to Section 751 (21 U.S.C. Sec. 379r) of the federal act.

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 797

An act to add a heading as Article 1 (commencing with Section 9100) to, and to add Article 2 (commencing with Section 9115) to, Chapter 2 of Division 8.5 of, and to add Chapter 4.5 (commencing with Section 9450) to Division 8.5 of, the Welfare and Institutions Code, relating to aging.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. A heading is added as Article 1 (commencing with Section 9100) to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 1. General Provisions

SEC. 2. Article 2 (commencing with Section 9115) is added to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 2. Senior Housing Information and Support Center

9115. There is in the California Department of Aging the Senior Housing Information and Support Center, which shall have the following functions:

(a) The center shall serve as a clearinghouse for information for seniors and their families regarding available innovative resources and senior services.

(b) (1) The center shall provide information or contract with another entity to provide information concerning housing options and home modification alternatives, to enable seniors to live independently or with their families as often as possible.

(2) The center shall distribute this information to each area agency on aging and to other appropriate entities throughout the state.

(c) The center shall promote education and training for professionals who work directly with seniors in order to maximize opportunities for independent living.

9116. The Director of the California Department of Aging shall appoint all necessary staff to carry out the provisions of this article.

9117. Implementation of this article shall be subject to an appropriation in the annual Budget Act.

SEC. 3. Chapter 4.5 (commencing with Section 9450) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 4.5. HOME MODIFICATIONS FOR SENIORS

9450. (a) The Legislature finds and declares all of the following:

(1) Thousands of California seniors are living with mobility and health problems and these numbers will increase as the state's population ages. Statistics show that 50 percent of people over the age of 80 years are disabled in some manner.

(2) Most housing was not designed for people who are disabled, have lost strength, flexibility, or balance through aging, and who necessarily have become fearful or extremely cautious in their daily activities to avoid injury. Front steps, staircases, narrow doorways, low electric sockets, low light levels, round door handles, high kitchen cabinets, and bathrooms without grab bars or moveable shower heads pose hazards for the elderly. One in three Americans over the age of 65 years suffers a fall each year, often in the home, which can cause serious injury and depression.

(3) Studies show that basic home modifications to improve safety and make it easier to maneuver about the home can forestall hospitalization and nursing home care as seniors grow more fragile. ''Aging in place'' is a new concept that can result in less injury, retaining elders in their homes, and offers a significant cost savings to health care insurers, families, and public agencies.

(b) It is the intent of the Legislature that the development of the ''aging in place'' concept be recognized and supported by the state, that funding for education and making home improvements be facilitated through public and private sources, and that recommendations for changes in home modification policies and information for home modification projects and products be developed.

9451. The department, in consultation with the commission, shall enter into a contract for the development of information and materials which shall be used to educate Californians on the concept of ''aging in place'' and the benefits of home modification. The contractor shall be a research-based university gerontology department with extensive experience and work with the concept of ''aging in place'' and the benefits of home modification.

9452. The department shall distribute the information developed pursuant to Section 9451 to each area agency on aging and to other appropriate entities throughout the state.

9453. The department, in cooperation with the entity contracting with the department pursuant to Section 9451, shall sponsor regional training sessions, and seminars, using the materials developed pursuant to this chapter.

9454. Implementation of this chapter shall be subject to an appropriation in the annual Budget Act.

CHAPTER 798

An act to add Section 32121.9 to the Health and Safety Code, relating to local health care districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(a) The formation of the Palm Drive Health Care District in the County of Sonoma reduces the risk of closure of the Palm Drive Hospital and preserves local access to health care services.

(b) Approval of the formation of that district by the local agency formation commission of the County of Sonoma was based on a plan that included the acquisition of the existing Palm Drive Hospital by the newly formed district.

(c) The voters overwhelmingly supported the formation of the new district at an election held on April 11, 2000.

(d) Current law, known as the Local Health Care District Law, allows the board of directors of a local health care district to issue revenue bonds pursuant to the Revenue Bond Law of 1941 but limits the amount of those bonds to 50 percent of the average of the district's gross revenues for the preceding three years.

(e) Because the newly formed Palm Drive Health Care District has not been in existence for three years, the district's board of directors cannot meet the condition imposed by current law.

SEC. 2. Notwithstanding Section 32316 of the Health and Safety Code, on or before January 1, 2004, the Board of Directors of the Palm Drive Health Care District may, by resolution adopted by a vote of four-fifths of the membership of the board, issue bonds of not more than

a maximum of 50 percent of the average of the Palm Drive Hospital's gross revenues for the 1997–98, 1998–99, and 1999–2000 fiscal years, pursuant to 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), to provide funds for the acquisition, construction, improvement, financing, or refinancing of enterprises including, but not limited to, any incidental expenses.

SEC. 3. Section 32121.9 is added to the Health and Safety Code, to read:

32121.9. A district that leases or transfers its assets to a corporation pursuant to this division, including, but not limited to, subdivision (p) of Section 32121 or Section 32126, shall act as an advocate for the community to the operating corporation. The district shall annually report to the community on the progress made in meeting the community's health needs.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Palm Drive Health Care District.

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

In order that the Board of Directors of the Palm Drive Health Care District may be authorized to issue revenue bonds to acquire the Palm Drive Hospital to preserve local access to health care services, and so that the health care districts that transfer their assets may act as community advocates at the earliest possible time, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 799

An act to amend Section 16525.2 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 16525.2 of the Welfare and Institutions Code is amended to read:

16525.2. ''Eligible child'' means any child who meets the requirements of subdivision (a) or (b), and subdivision (c).

(a) Any child who has a medically diagnosed condition or symptoms resulting from, or suspected as resulting from, substance abuse by the mother.

(b) Any child who is HIV positive.

(c) Any child who meets the requirements of either subdivision (a) or (b) and who meets all of the following requirements:

(1) The child is a dependent child of the court.

(2) The child is aged newborn to 36 months. The maximum age prescribed by this paragraph shall be increased to 60 months if funds are available within the existing appropriation for counties maintaining a program for a minimum of three years, or, for other counties, if funds are available pursuant to the California Children and Families Program (Division 108 (commencing with Section 130100) of the Health and Safety Code) to provide services to children who are aged between 36 and 60 months.

(3) The child is the child of a resident of a participating county pursuant to this chapter.

CHAPTER 800

An act to amend Section 14110.8 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(a) Residents in California's long-term care facilities are particularly vulnerable to the theft of personal funds designated as resident ''share of cost'' under the Medi-Cal program.

(b) The theft or illegal diversion of a resident's share of cost funds has an adverse impact on the resources available to ensure quality care for all facility residents.

(c) This act is necessary to protect long-term care resident rights, provide appropriate resources for resident care, and ensure that resident funds designated to pay for long-term care are used for that purpose.

(d) This act is intended to affect individuals who intentionally steal or divert resident share of cost, and not to change the obligations or

responsibilities of Medi-Cal residents or deter legitimate disputes over the amount of a resident's share of cost.

SEC. 2. Section 14110.8 of the Welfare and Institutions Code is amended to read:

14110.8. (a) For the purposes of this section:

(1) ''Facility'' means any long-term health care facility as defined in subdivisions (c), (d), (e), (g), and (h) of Section 1250 of the Health and Safety Code.

(2) ''Resident'' means a person who is a facility resident or patient and a Medi-Cal beneficiary and whose facility care is being paid for in whole or in part by Medi-Cal.

(3) ''Agent'' means a person who manages, uses, or controls those funds or assets of the resident that legally are required to be used to pay the resident's share of cost and other charges not paid for by the Medi-Cal program.

(4) ''Responsible party'' means a person other than the resident or potential resident, who, by virtue of signing or cosigning an admissions agreement of a facility, either together with, or on behalf of, a potential resident, becomes personally responsible or liable for payment of any portion of the charges incurred by the resident while in the facility. A person who signs or cosigns a facility's admissions agreement by virtue of being an agent under a power of attorney for health care or an attorney-in-fact under a durable power of attorney executed by the potential resident, a conservator of the person or estate of the potential resident, or a representative payee, is not a responsible party under this section, and does not thereby assume personal responsibility or liability for payment of any charges incurred by the resident, except to the extent that the person, or the resident's conservator or representative payee is an agent as defined in paragraph (3).

(b) No facility may require or solicit, as a condition of admission into the facility, that a Medi-Cal beneficiary have a responsible party sign or cosign the admissions agreement. No facility may accept or receive, as a condition of admission into the facility, the signature or cosignature of a responsible party for a Medi-Cal beneficiary.

(c) A facility may require, as a condition of admission, where a resident has an agent, that the resident's agent sign or cosign the admissions agreement and agree to distribute to the facility promptly when due, the share of cost and any other charges not paid for by the Medi-Cal program which the resident or his or her agent has agreed to pay. The financial obligation of the agent shall be limited to the amount of the resident's funds received but not distributed to the facility. A new agent who did not sign or cosign the admissions agreement shall be held responsible to distribute funds in accordance with this section.

(d) When a resident on non-Medi-Cal status converts to Medi-Cal coverage, any security deposit paid to the facility by the resident or on the resident's behalf as a condition of admission to the facility shall be returned and the obligations and responsibilities of the resident or responsible party during the time period when the resident is covered by Medi-Cal shall be limited to the obligations and responsibilities provided for under the Medi-Cal program. In the event that the resident becomes ineligible for Medi-Cal coverage at any time subsequent to converting to Medi-Cal coverage, the resident and responsible party shall be bound by the terms of the original admission agreement, or any admission agreement in effect at the time the Medi-Cal coverage commenced.

(e) When a resident on non-Medi-Cal status converts to Medi-Cal coverage, the facility shall make a reasonable attempt to assist the resident in contacting the county to obtain an estimate of the resident's share of cost.

(f) A resident and his or her agent shall pay to the facility the share of cost, for which he or she is responsible under the Medi-Cal program, unless otherwise exempted by law.

(g) If a resident or his or her agent disputes the amount of share of cost owed to a facility, the resident or agent may apply for a state hearing pursuant to Section 10950 for a determination of the amount of share of cost owed to the facility.

(h) Any agent who willfully violates the requirements of this section is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not to exceed 180 days, or both.

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 801

An act to add Section 5930 to the Corporations Code, relating to health facilities.

[Approved by Governor September 28, 2000. Filed with
Secretary of State September 28, 2000.]

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

SECTION 1. Section 5930 is added to the Corporations Code, to read:

5930. (a) The Attorney General shall prepare a plan for an evaluation of whether additional standards for charitable care and community benefits should be established for private, not-for-profit corporations that operate or control a general acute care hospital as defined in Section 1250 of the Health and Safety Code.

(b) In preparing the plan, the Attorney General shall consult with representatives of interested parties, including, but not limited to, all of the following:

(1) Health facility associations.

(2) Physician organizations.

(3) Consumer groups.

(4) Health care employee organizations.

(5) Community groups.

(6) The Office of Statewide Health Planning and Development.

(c) The plan shall provide for the evaluation of all of the following:

(1) The degree to which private, not-for-profit hospitals provide charitable care and community benefits, including the nature of the benefits, the definition of the community, and a comparison of the cost of providing the benefit with the value of the benefits given to the community.

(2) The implications of the relationships among private not-for-profit hospitals and affiliated entities, as defined in Section 5031 of the Corporations Code, for purposes of determining community benefits.

(3) The role of the board of directors of private, not-for-profit hospitals in ensuring benefit to the community.

(d) The plan shall be submitted to the appropriate policy and fiscal committees of the Legislature by March 1, 2001.

SEC. 2. The California Health Facilities Financing Authority may adopt emergency regulations to implement the Cedillo-Alarcon Community Clinic Investment Act of 2000, Section 15438.6 of the Government Code, as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this section filed with the Office of Administrative Law on or before July 1, 2001, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or

general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 360 days.

CHAPTER 802

An act to add Sections 852 and 853 to the Business and Professions Code, relating to the healing arts.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(a) Thirty-three and eight-tenths percent of Medi-Cal recipients in 1998 spoke a foreign language; Spanish was the number one foreign language spoken.

(b) National medical journals and associations have acknowledged the importance of having medical providers be cultural and linguistically competent to serve culturally diverse patients.

(c) The Journal of the American Medical Association, 1999, ''Race, Gender, and Patient-Physician Relationship'' Volume 282 #6, stated that ''Without cultural competence, a physician may (1) unintentionally incorporate racial biases into his or her interpretations of patients' symptoms, predications of patients' behaviors, and medical decision making; (2) lack understanding of patients' ethnic and cultural disease models and attributions of symptoms; (3) be unaware of or have expectations of the visit that differ from patients' expectations.''

(d) In 1995, 1,641 underrepresented minorities applied to California medical schools and 231 were admitted; in 1998, this number declined to 1,223 applications and 184 admissions.

(e) Only 0.8 percent of medical schools in the United States require a separate course on multicultural medicine; even fewer require any classes in cultural and linguistic competency.

(f) The lack of cultural and linguistic competency among medical providers may be dangerous to the health of certain patients.

SEC. 2. Section 852 is added to the Business and Professions Code, to read:

852. (a) The Task Force on Culturally and Linguistically Competent Physicians and Dentists is hereby created and shall consist of the following members:

(1) The State Director of Health Services and the Director of Consumer Affairs, who shall serve as cochairs of the task force.

(2) The Executive Director of the Medical Board of California.

(3) The Executive Director of the Dental Board of California.

(4) One member appointed by the Senate Committee on Rules.

(5) One member appointed by the Speaker of the Assembly.

(b) Additional task force members shall be appointed by the Director of Consumer Affairs, in consultation with the State Director of Health Services, as follows:

(1) Representatives of organizations that advocate on behalf of California licensed physicians and dentists.

(2) California licensed physicians and dentists that provide health services to members of language and ethnic minority groups.

(3) Representatives of organizations that advocate on behalf of, or provide health services to, members of language and ethnic minority groups.

(4) Representatives of entities that offer continuing education for physicians and dentists.

(5) Representatives of California's medical and dental schools.

(6) Individuals with experience in developing, implementing, monitoring, and evaluating cultural and linguistic programs.

(c) The duties of the task force shall include the following:

(1) Developing recommendations for a continuing education program that includes language proficiency standards of foreign language to be acquired to meet linguistic competency.

(2) Identifying the key cultural elements necessary to meet cultural competency by physicians, dentists, and their offices.

(3) Assessing the need for voluntary certification standards and examinations for cultural and linguistic competency.

(d) The task force shall hold hearings and convene meetings to obtain input from persons belonging to language and ethnic minority groups to determine their needs and preferences for having culturally competent medical providers. These hearings and meetings shall be convened in communities that have large populations of language and ethnic minority groups.

(e) The task force shall report its findings to the Legislature and appropriate licensing boards within two years after creation of the task force.

(f) The Medical Board of California and the Dental Board of California shall pay the state administrative costs of implementing this section.

(g) Nothing in this section shall be construed to require mandatory continuing education of physicians and dentists.

SEC. 3. Section 853 is added to the Business and Professions Code, to read:

853. (a) A subcommittee of the task force established in Section 852 is hereby created to examine the feasibility of establishing a pilot program that would allow Mexican and Caribbean licensed physicians and dentists to practice in nonprofit community health centers in California's medically underserved areas.

(b) The subcommittee shall consist of the following members:

(1) The State Director of Health Services, who shall serve as the chair.

(2) The Executive Director of the Medical Board of California.

(3) The Executive Director of the Dental Board of California.

(4) The Director of the Office of Statewide Health Planning and Development.

(c) Additional subcommittee members shall be appointed by the State Director of Health Services, including the following:

(1) Representatives of organizations that advocate on behalf of California licensed physicians and dentists.

(2) A representative of a nonprofit clinic association that advocates on behalf of members of language and ethnic minority groups and provides health services to a patient population that meets the following characteristics:

(A) Over 77 percent of patients are members of ethnic groups.

(B) Over 92 percent of patients have incomes less than 200 percent of the poverty level.

(C) Over 62 percent of patients do not speak English as their primary language.

(d) The subcommittee shall report to the task force by March 1, 2001, and the task force shall forward the report, with any additional comments, to the Legislature by April 1, 2001.

(e) The Medical Board of California and the Dental Board of California shall pay the state administrative costs of implementing this section.

CHAPTER 803

An act to amend Section 125001 of, to add Sections 124976 and 124977 to, and to repeal Section 125005 of, the Health and Safety Code, relating to genetic testing, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 124976 is added to the Health and Safety Code, to read:

124976. The Genetic Disease Testing Fund is continued in existence as a special fund in the State Treasury. All moneys collected by the department for activities conducted as authorized in this chapter shall be deposited in the Genetic Disease Testing Fund which, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the department to carry out the purposes of this chapter.

SEC. 2. Section 124977 is added to the Health and Safety Code, to read:

124977. (a) It is the intent of the Legislature that, unless otherwise specified, the program carried out pursuant to this chapter be fully supported from fees collected for services provided by the program.

(b) (1) The department shall charge a fee to all payers for any tests or activities performed pursuant to this chapter. The amount of the fee shall be established by regulation and periodically adjusted by the director in order to meet the costs of this chapter. Notwithstanding any other provision of law, any fees charged for screening and followup services provided to Medi-Cal eligible persons, health care service plan enrollees, or persons covered by disability insurance policies, shall be paid in full directly to the Genetic Disease Testing Fund, subject to all terms and conditions of each enrollee's or insured's health care service plan or insurance coverage, whichever is applicable, including, but not limited to, copayments and deductibles applicable to these services, and only if these copayments, deductions, or limitations are disclosed to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(2) The department shall expeditiously undertake all steps necessary to implement the fee collection process, including personnel, contracts, and data processing, so as to initiate the fee collection process at the earliest opportunity. In no event shall a hospital be charged a fee for any test performed pursuant to this chapter on or after July 1, 2001.

(c) (1) The Legislature finds that timely implementation of changes in genetic screening programs and continuous maintenance of quality statewide services requires expeditious regulatory and administrative procedures, including policies and procedures developed pursuant to Sections 12101 and 12102 of the Public Contract Code or Division 25.2 (commencing with Section 38070) of the Health and Safety Code, to obtain the most cost-effective electronic data processing, hardware, software services, testing equipment, testing services, and followup contracts.

(2) The expenditure of funds from the Genetic Disease Testing Fund for these purposes shall not be subject to Section 12113.5 of, and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of, the Public Contract Code. The department shall provide the Department of Finance with documentation that equipment and services have been obtained at the lowest cost consistent with technical requirements for a comprehensive high-quality program.

(d) Nothing in this section shall be construed to impose a new mandated benefit on health care service plans and health insurers.

SEC. 3. Section 125001 of the Health and Safety Code is amended to read:

125001. (a) The Legislature finds and declares all of the following:

(1) California requires testing at birth for certain genetic diseases or conditions.

(2) Technology called tandem mass spectography is now available that would permit testing for many more genetic diseases or conditions.

(3) Many of the additional tests can be made from the same blood sample at costs of between eighteen dollars ($18) and twenty dollars ($20).

(4) It is the intent of the Legislature that a program for testing services and training be initiated as expeditiously as possible utilizing laboratory services experienced in tandem mass spectography.

(b) The department shall establish a program for the development and evaluation of genetic disease testing, and may provide laboratory testing facilities or make grants to, contract with, or make payments to, any laboratory that it deems qualified to conduct tandem mass spectrometry testing or with any metabolic specialty clinic to provide necessary treatment with qualified specialists. The program shall provide genetic screening and followup services for persons who elect to have the additional screening.

(c) The one-time sum of three million nine hundred thousand dollars ($3,900,000) is appropriated to the department from the Genetic Disease Testing Fund in order to support the cost of the trial of the program and a followup report. It is the intent of the Legislature that no additional fees be charged to patients for additional genetic screening provided through tandem mass spectrometry in the trial of the program.

(d) The department shall report to the Legislature regarding the progress of the program on or before January 1, 2002. The report shall include the costs for screening, followup, and treatment as compared to costs and morbidity averted for each condition tested for in the program.

SEC. 4. Section 125005 of the Health and Safety Code is repealed.

SEC. 5. Sections 1 and 4 of this act shall only become operative if Senate Bill 1364 is not enacted during the 2000 portion of the

1999–2000 Regular Session, or, if enacted, Senate Bill 1364 does not amend Section 125005 of the Health and Safety Code.

CHAPTER 804

An act to add Sections 14132.92 and 14132.93 to the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 14132.92 is added to the Welfare and Institutions Code, to read:

14132.92. (a) Notwithstanding subdivision (a) of Section 4512, or any other provision of this chapter or Chapter 8 (commencing with Section 14200), services provided on or after July 1, 2000, by facilities defined in subdivisions (e) and (h) of Section 1250 of the Health and Safety Code that are otherwise covered services under this chapter shall be reimbursed by the Medi-Cal program when provided to a Medi-Cal beneficiary that has a developmental disability as defined in Section 6001(8) of Title 42 of the United States Code or is a person with a related condition as defined in Section 435.1009 of Title 42 of the Code of Federal Regulations, provided that the Medi-Cal beneficiary was residing in a licensed intermediate care facility/developmentally disabled-habilitative or a licensed intermediate care facility/developmentally disabled-nursing on July 1, 2000, but only for as long as the beneficiary continues, from that date, to reside in a licensed intermediate care facility/developmentally disabled-habilitative or a licensed intermediate care facility/developmentally disabled-nursing.

(b) Nothing in subdivision (a) shall eliminate, for purposes of reimbursement under this section, the requirements and time limits set forth in Section 14115, or any regulations adopted thereunder.

(c) The department shall seek further financial participation, and shall seek federal approval of a state plan amendment if necessary under Section 440.150 of Title 42 of the Code of Federal Regulations, for services provided pursuant to subdivision (a). If federal financial participation is not made available for the services, the services nonetheless shall be reimbursed from the General Fund.

SEC. 2. Section 14132.93 is added to the Welfare and Institutions Code, to read:

14132.93. It is the intent of the Legislature that if services meeting the conditions of subdivision (a) of Section 14132.92 have been provided to a Medi-Cal beneficiary during the time period of June 15, 1998, to July 2, 2000, and notwithstanding Section 14115, a bill for these services is submitted on behalf of each beneficiary receiving these services postmarked to the department on or before April 30, 2001, the services shall be reimbursed by the General Fund. However, the department shall seek federal financial participation and shall seek federal approval of a state plan amendment if necessary under Section 440.150 of Title 42 of the Code of Federal Regulations, for these services provided during that period. If federal financial participation is not made available for that period, the services nonetheless shall be reimbursed from the General Fund.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that certain persons with developmental disabilities receive Medi-Cal services at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 805

An act to amend Sections 39153, 39675, 42400, 42400.1, 42400.2, 42400.3, 42402, 42402.1, 42402.2, and 42402.3 of, and to add Sections 42400.3.5, 42400.7, 42400.8, and 42402.4 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 39153 of the Health and Safety Code is amended to read:

39153. (a) On or before January 1, 2005, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the results of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 39150 have been achieved.

(b) This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends that date.

SEC. 2. Section 39675 of the Health and Safety Code is amended to read:

39675. (a) Sections 42400, 42400.1, 42400.2, and 42402.2 apply to violations of regulations or orders adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or that are implemented and enforced as authorized by subdivision (b) of Section 39658.

(b) The adoption of this section does not constitute a change in, but is declaratory of, existing law.

SEC. 3. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars ($15,000) or imprisonment in the county jail for not more than nine months, or both.

(d) As used in this section, ''actual injury'' means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.

SEC. 4. Section 42400.1 of the Health and Safety Code is amended to read:

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars ($25,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, is guilty of a misdemeanor and is subject to a fine of not more than one hundred thousand dollars ($100,000) or imprisonment in the county jail for not more than one year, or both.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 5. Section 42400.2 of the Health and Safety Code is amended to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than forty thousand dollars ($40,000) or imprisonment in the county jail for not more than one year, or both.

(b) For purposes of this section, ''corrective action'' means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the county jail for not more than one year, or both.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

SEC. 6. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than seventy-five thousand dollars ($75,000), or imprisonment in the county jail for not more than one year, or both.

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is subject to a fine of not more than one hundred twenty-five thousand dollars ($125,000) or imprisonment in the county jail for not more than one year, or both. However, if the defendant is a corporation, the maximum fine may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the county jail for not more than one year, or both, or is subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the state prison, or both. If the defendant is a corporation, the maximum fine may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

(e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.

(f) For the purposes of this section:

(1) ''Great bodily injury'' means great bodily injury as defined by subdivision (e) of Section 12022.7 of the Penal Code.

(2) ''Imprisonment in state prison'' means imprisonment in the state prison for 16 months, or two or three years.

(3) ''Unreasonable risk of great bodily injury or death'' means substantial probability of great bodily injury or death.

SEC. 7. Section 42400.3.5 is added to the Health and Safety Code, to read:

42400.3.5. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the

state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (*l*) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(*l*)), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars ($35,000) or imprisonment in the county jail for not more than nine months, or both.

(c) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).

(d) Subdivisions (a) and (b) shall apply only to those violations that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 8. Section 42400.7 is added to the Health and Safety Code, to read:

42400.7. (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or 42402.4 precludes prosecution under Section 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil action shall not be dismissed upon the filing of a criminal complaint for the same offense.

SEC. 9. Section 42400.8 is added to the Health and Safety Code, to read:

42400.8. In determining the amount of fine to impose pursuant to Sections 42400, 42400.1, 42400.2, 42400.3, 42400.3.5, and 42400.4, the court shall consider all relevant circumstances, including, but not limited to, the following:

(a) The extent of harm caused by the violation.

(b) The nature and persistence of the violation.

(c) The length of time over which the violation occurs.

(d) The frequency of past violations.

(e) The record of maintenance.

(f) The unproven or innovative nature of the control equipment.

(g) Any action taken by the person including the nature, extent, and time of response of any cleanup and construction undertaken, to mitigate the violation.

(h) The financial burden on the defendant.

(i) Any other circumstances the court deems relevant.

SEC. 10. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as provided in Sections 42402.1, 42402.2, 42402.3, and 42402.4, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars ($1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars ($10,000).

(2) (A) If a civil penalty in excess of one thousand dollars ($1,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional nor negligent conduct.

(B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.

(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in

subdivision (d) of Section 42400, to the health and safety of a considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars ($15,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 11. Section 42402.1 of the Health and Safety Code is amended to read:

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000).

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than one hundred thousand dollars ($100,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 12. Section 42402.2 of the Health and Safety Code is amended to read:

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars ($40,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 13. Section 42402.3 of the Health and Safety Code is amended to read:

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, including a district hearing

board, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than seventy-five thousand dollars ($75,000).

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars ($125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by subdivision (e) of Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars ($250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 14. Section 42402.4 is added to the Health and Safety Code, to read:

42402.4. Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, is liable for a civil penalty of not more than thirty-five thousand dollars ($35,000).

SEC. 15. 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 806

An act to amend Sections 2181, 2182, 12976, 12999.4, 12999.5, 14008, and 14033 of, and to add and repeal Section 12999.6 of, the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 2181 of the Food and Agricultural Code is amended to read:

2181. Upon satisfactory evidence presented to the Secretary or the Director of the Department of Pesticide Regulation that the commissioner of any county is guilty of neglect of duty, incompetence, or misconduct in office, the trial board that is selected, pursuant to this article, shall hold a hearing at the time and place specified by the trial board. The secretary shall convene the trial board when the alleged offenses come under the jurisdiction of the Department of Food and Agriculture, and the director shall convene the trial board when the alleged offenses come under the jurisdiction of the Department of Pesticide Regulation.

SEC. 2. Section 2182 of the Food and Agricultural Code is amended to read:

2182. The county agricultural commissioner's trial board shall be composed of the Secretary and the Director of the Department of Pesticide Regulation, a person who has knowledge of, or experience in, agriculture, selected by the board of supervisors of the county of the charged commissioner, and a hearing officer from the Office of Administrative Hearings, who shall be chairman and a voting member of such board.

The department that convenes the trial board is responsible, under Section 11370.4 of the Government Code, for the cost of the services provided for by the Office of Administrative Hearings in carrying out the provisions of this section.

SEC. 3. Section 12976 of the Food and Agricultural Code is amended to read:

12976. The director may adopt regulations to govern the possession, sale, or use of any pesticide which the director finds necessary to carry

out the purposes of Division 6 (commencing with Section 11401) or this division.

SEC. 4. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Sections 12115, 12116, 12671, 12992, 12993, Chapter 10 (commencing with Section 12400) of Division 6, Article 4.5 (commencing with Section 12841), Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, of not more than five thousand dollars ($5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing, the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 5. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 6. Section 12999.6 is added to the Food and Agricultural Code, to read:

12999.6. (a) The director may initiate and maintain enforcement actions for violations described in subdivision (b) and to impose the fine described in subdivision (b), or may refer any of those violations to the proper enforcement agency, including the district attorney in the county where the violations have occurred or the Attorney General.

(b) If the director determines that violations of statutes as defined in Section 12999.5, committed in multiple jurisdictions are not appropriate matters to be enforced by a commissioner, or in the case of priority investigations, as defined in the 1995 Cooperative Agreement or subsequent modifications to that agreement between the California Department of Pesticide Regulation, the California Agricultural Commissioners and Sealers Association, and the United States Environmental Protection Agency, Region IX, the director may take the appropriate action. The director may levy a penalty of not more than five thousand dollars ($5,000) for each violation. The department may adopt regulations to enforce this section.

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(d) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek judicial review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service

required in connection with the entry of judgment pursuant to this section.

(f) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

(g) This section shall only apply to violations that occur on or after January 1, 2001.

(h) This section shall remain in effect only until January 2, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 7. Section 14008 of the Food and Agricultural Code is amended to read:

14008. Any permit may be refused, revoked, or suspended for violation of any of the conditions of the permit, or of a previous permit, or for violation of any provision of this division or of the regulations that are issued pursuant to it, or for the failure to pay a civil penalty or comply with any lawful order of the commissioner, once that order is final.

SEC. 8. Section 14033 of the Food and Agricultural Code is amended to read:

14033. The director shall adopt regulations that govern the use of 2,4-D and any other herbicide which he finds and determines is injurious to any crop that is being grown in any area of the state. The regulations of the director may prescribe the time when, and the conditions under which, a restricted herbicide may be used in different areas of the state. They may provide that a restricted herbicide shall be used only under permit of the commissioner or under the direct supervision of the commissioner, subject to any of the following limitations:

(a) In certain areas.

(b) In excess of certain quantities or concentrations.

CHAPTER 807

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

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 13263.3 of the Water Code is amended to read:

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

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

(A) ''Input change,'' which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

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

(C) ''Production process change,'' which means a change in a process, method, or technique that is used to produce a product or a desired result, including the return of materials or their components for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(D) ''Product reformulation,'' which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of problem pollutants discharged in wastewater.

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

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

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

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

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

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

(D) The discharger is subject to a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The state board or regional board may assess civil liability pursuant to paragraph (1) of subdivision (c) of Section 13385 against a discharger for failure to complete a pollution prevention plan required by the state board or a regional board, for submitting a plan that does not

comply with the act, or for not implementing a plan, unless the POTW has assessed penalties for the same action.

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

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

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

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

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

SEC. 2. Section 13385 of the Water Code is amended to read:

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

(1) Section 13375 or 13376.

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

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity

subject to the order or prohibition is subject to regulation under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k) a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for the first serious violation and each additional serious violation in any period of six consecutive months, except that if no serious violation has occurred in the prior six months, the state board or regional board, in lieu of assessing the penalty applicable to the first serious violation, may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan. If the state board or regional board elects to require the discharger to carry out a supplemental environmental project or develop a pollution prevention plan pursuant to this subdivision, a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each additional serious violation in the six-month period that began with the violation that was waived in lieu of the supplemental environmental project or pollution prevention plan.

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

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

(B) A ''supplemental environmental project'' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(C) A ''period of six consecutive months'' means the period beginning on the day following the date on which a serious violation or one of the violations described in subdivision (i) occurs and ending 180 days after that date.

(i) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k) a mandatory minimum penalty of

three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(1) Exceeds a waste discharge requirement effluent limitation.

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

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

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

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

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

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

(D) A bypass of a treatment facility located in the County of Los Angeles during the 2001 calendar year if the applicable waste discharge requirements incorporate a provision for the bypass, and that bypass meets the conditions set forth in Section 122.41 (m)(4) of Title 40 of the Code of Federal Regulations and any more stringent conditions incorporated into the waste discharge requirements and the bypass has been approved by the regional board as meeting those conditions.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.

(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

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

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

(n) (1) The state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

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

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

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

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

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

SEC. 3. (a) Mandatory minimum penalties shall not be assessed pursuant to subdivision (h) or (i) of Section 13385 of the Water Code for any discharge occurring on or after January 1, 2000, if all of the following requirements are met:

(1) The discharge is limited to groundwater from construction dewatering and storm water runoff during construction.

(2) The discharge is regulated by a time schedule order or a cease and desist order issued by the Los Angeles Regional Water Quality Control Board and is subject to interim numeric effluent limitations.

(3) The discharge is in compliance with the interim effluent limitations in the time schedule order or cease and desist order.

(4) The time schedule order or cease and desist order requires that the discharge comply with the numeric effluent limitations in the waste discharge requirements applicable to the discharge by no later than January 1, 2002.

(5) The time schedule order or cease and desist order includes a protocol that ensures that all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the discharge have been taken.

(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.

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CHAPTER 808

An act to amend Section 6143.5 of the Business and Professions Code, to amend Section 1785.3 of the Civil Code, to amend Sections 683.130, 683.310, 689.020, 689.030, 689.040, 689.050, 695.211, 695.221, 699.510, 704.114, 704.120, 704.130, 704.160, 706.030, 708.730, 708.740, and 1218 of the Code of Civil Procedure, to amend Sections 150, 290, 3030, 3555, 3751.5, 3752, 3761, 3771, 4006, 4009, 4065, 4200, 4201, 4202, 4203, 4204, 4205, 4250, 4251, 4351, 4352, 4502, 4506.3, 4573, 4701, 4721, 4729, 5000, 5001, 5002, 5100, 5214, 5230, 5231, 5235, 5237, 5241, 5244, 5245, 5246, 5247, 5252, 5260, 5261, 5280, 5600, 5601, 5602, 5603, 7558, 7573, 7574, 7575, 7630, 7634, 10008, 17000, 17212, 17304, 17400, 17401, 17402, 17404, 17406, 17430, 17434, 17504, 17505, 17508, 17518, 17525, 17604, and 17714 of, to amend and renumber Section 17401 of, to add Sections 113, 17531 and 17540 to, to repeal and add Section 291 to, and to repeal Sections 5101, 5102, and 17400.5 of, the Family Code, to amend Sections 6103.9, 7480, 11552, 12419.3, 15703, 26746, 27757, 29410, 29411, 29412, 29413, 29414, 29415, and 29416 of the Government Code, to amend Section 102447 of the Health and Safety Code, to amend Section 10121.6 of the Insurance Code, to amend Section 138.5 of the Labor Code, to amend Sections 830.35, 11105, and 13300 of the Penal Code, to amend Sections 19271.6, 19272, 19274, and 19275 of the Revenue and Taxation Code, to amend Sections 1088.8, 1255.7, and 2630 of the Unemployment Insurance Code, and to amend Sections 903.4, 903.41, 903.5, 10082, 10604.5, 10604.6, 11457, 11477, 11477.02, 14008.6, and 14124.93 of, and to add Section 11484 to, and to repeal Section 11479.7 of the Welfare and Institutions Code, relating to child support enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. The Legislature recognizes the vital importance to the well-being of California's children of the prompt and effective enforcement of support obligations. Title IV-D of the Social Security Act requires that agencies that carry out Title IV-D support enforcement functions be given access to information available to law enforcement agencies and correction systems. It is the intent of the Legislature that the local child support agencies established by Section 17304 of the Family Code be authorized to receive the same level of state summary criminal history information that heretofore has been available to the

district attorney's family support divisions. It is also the intent of the Legislature that the local child support agencies be authorized to request state summary criminal history information from law enforcement agencies and shall be authorized to provide the information obtained through the California Law Enforcement Telecommunications System.

SEC. 2. Section 6143.5 of the Business and Professions Code is amended to read:

6143.5. Any member, active or inactive, failing to pay any child support after it becomes due shall be subject to Section 17520 of the Family Code.

SEC. 3. Section 1785.3 of the Civil Code is amended to read:

1785.3. The following terms as used in this title have the meaning expressed in this section:

(a) ''Adverse action'' means a denial or revocation of credit, a change in the terms of an existing credit arrangement which is adverse to the interests of the consumer, or a refusal to grant credit in substantially the amount or on substantially the terms requested. ''Adverse action'' includes all of the following:

(1) Any denial of, increase in any charge for, or reduction in the amount of, insurance for personal, family, or household purposes made in connection with the underwriting of insurance.

(2) Any denial of employment or any other decision made for employment purposes which adversely affects any current or prospective employee.

(3) Any action taken, or determination made, with respect to a consumer (A) for an application for an extension of credit, or an application for the hiring of a dwelling unit, and (B) that is adverse to the interests of the consumer.

''Adverse action'' does not include (A) a refusal to extend additional credit to a consumer under an existing credit arrangement if (i) the applicant is delinquent or otherwise in default under that credit arrangement or (ii) the additional credit would exceed a credit limit previously established for the consumer or (B) a refusal or failure to authorize an account transaction at a point of sale.

(b) ''Consumer'' means a natural individual.

(c) ''Consumer credit report'' means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11.

The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (2) any communication of that information or information from a credit application by a consumer that is internal within the organization that is the person making the report or that is made to an entity owned by, or affiliated by corporate control with, that person; provided that the consumer is informed by means of a clear and conspicuous written disclosure that information contained in the credit application may be provided to these persons; however, where a credit application is taken by telephone, disclosure shall initially be given orally at the time the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to that consumer after the application is taken, (3) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, (4) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under Section 1785.20, (5) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning those items of information, (6) any communication about a consumer in connection with a credit transaction which is not initiated by the consumer, between persons who are affiliated (as defined in Section 150 of the Corporations Code) by common ownership or common corporate control (as defined by Section 160 of the Corporations Code), if either of those persons has complied with paragraph (2) of subdivision (b) of Section 1785.20.1 with respect to a prequalifying report from which the information communicated is taken and provided the consumer has consented to the provision and use of the prequalifying report in writing, or (7) any consumer credit report furnished for use in connection with a transaction which consists of an extension of credit to be used solely for a commercial purpose.

(d) ''Consumer credit reporting agency'' means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes.

(e) ''Credit transaction that is not initiated by the consumer'' does not include the use of a consumer credit report by an assignee for collection or by a person with which the consumer has an account for purposes of (1) reviewing the account or (2) collecting the account. For purposes of this subdivision, ''reviewing the account'' includes activities related to account maintenance and monitoring, credit line increases, and account upgrades and enhancements.

(f) ''Employment purposes,'' when used in connection with a consumer credit report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) ''File,'' when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer credit reporting agency, regardless of how the information is stored.

(h) ''Firm offer of credit'' means any offer of credit to a consumer that will be honored if, based on information in a consumer credit report on the consumer and other information bearing on the creditworthiness of the consumer, the consumer is determined to meet the criteria used to select the consumer for the offer and the consumer is able to provide any real property collateral specified in the offer. For purposes of this subdivision, the phrase ''other information bearing on the creditworthiness of the consumer'' means information that the person making the offer is permitted to consider pursuant to any rule, regulation, or formal written policy statement relating to the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), promulgated by the Federal Trade Commission or any federal bank regulatory agency.

(i) ''Item of information'' means any of one or more informative entries in a credit report which causes a creditor to deny credit to an applicant or increase the cost of credit to an applicant or deny an applicant a checking account with a bank or other financial institution.

(j) ''Person'' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(k) ''Prequalifying report'' means a report containing the limited information permitted under paragraph (2) of subdivision (b) of Section 1785.11.

(*l*) ''State or local child support enforcement agency'' means the Department of Child Support Services or local child support agency acting pursuant to Division 17 (commencing with Section 17000) of the Family Code to establish, enforce or modify child support obligations, and any state or local agency or official that succeeds to these responsibilities under a successor statute.

SEC. 4. Section 683.130 of the Code of Civil Procedure is amended to read:

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) In the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

SEC. 5. Section 683.310 of the Code of Civil Procedure is amended to read:

683.310. Except as otherwise provided in the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

SEC. 6. Section 689.020 of the Code of Civil Procedure is amended to read:

689.020. (a) Except as otherwise provided by statute, whenever a warrant may properly be issued by a local child support agency pursuant to Section 17522 of the Family Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the local child support agency may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of the remedies provided under this chapter is the superior court in the county where the local child support agency enforcing the support obligation is located.

SEC. 7. Section 689.030 of the Code of Civil Procedure is amended to read:

689.030. (a) Whenever the local child support agency, pursuant to Section 17522 of the Family Code, levies upon property pursuant to a warrant or notice of levy for the collection of a support obligation:

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

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

(b) In the case of a warrant or notice of levy issued pursuant to Section 17522 of the Family Code, the claim of exemption or the third-party claim shall be filed with the local child support agency that issued the warrant or notice of levy.

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

SEC. 8. Section 689.040 of the Code of Civil Procedure is amended to read:

689.040. (a) Notwithstanding any other provision of law, in the case of a writ of execution issued by a court of competent jurisdiction pursuant to Chapter 3 (commencing with Section 699.010) and Chapter 5 (commencing with Section 706.010) of Division 2, the local child support agency, when enforcing a support obligation pursuant to Division 17 (commencing with Section 17000) of the Family Code, may perform the duties of the levying officer, except that the local child support agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer.

(b) Notwithstanding subdivision (a) of Section 700.140, if the writ of execution is for a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the local child support agency may deliver or mail the writ of execution to a centralized location designated by the bank or savings and loan association. If the writ of execution is received at the designated central location, it will apply to all deposits and credits and personal property held by the bank or savings and loan association regardless of the location of that property.

SEC. 9. Section 689.050 of the Code of Civil Procedure is amended to read:

689.050. For the purpose of this chapter:

(a) ''Judgment creditor'' or ''creditor'' means the local child support agency seeking to collect a child or spousal support obligation pursuant to a support order.

(b) ''Judgment debtor'' or ''debtor'' means the debtor from whom the support obligation is sought to be collected.

SEC. 10. Section 695.211 of the Code of Civil Procedure is amended to read:

695.211. (a) Every money judgment or order for child support shall provide notice that interest on arrearages accrues at the legal rate.

(b) The notice provisions required by this section shall be incorporated in the appropriate Judicial Council forms.

(c) Upon implementation of the California Child Support Automation System prescribed in Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code and certification of the California Child Support Automation System by the United States Department of Health and Human Services, whenever a statement of account is issued by the local child support agency in any child support action, the statement shall include a statement of an amount of current support, arrears, and interest due.

SEC. 11. Section 695.221 of the Code of Civil Procedure is amended to read:

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

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

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

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

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation (CCSA) system, all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.

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

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

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

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

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

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

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

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

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

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

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

SEC. 12. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of the Family Code.

SEC. 12.1. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of the Family Code.

(c) (1) The writ of execution shall be issued in the name of the judgment debtor as listed on the judgment and may include the additional name or names by which the judgment debtor is known as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution. Prior to the clerk of court issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the judgment debtor, the court shall authorize the issuance of the writ of execution with the additional name or names.

(2) In any case where the writ of execution lists any name other than that listed on the judgment, the person in possession or control of the levied property, if other than the judgment debtor, shall not pay to the levying officer the amount or deliver the property being levied upon until being notified to do so by the levying officer. The levying officer may not require the person, if other than the judgment debtor, in possession or control of the levied property to pay the amount or deliver the property levied upon until the expiration of 15 days after service of notice of levy.

(3) If a person who is not the judgment debtor has property erroneously subject to an enforcement of judgment proceeding based upon an affidavit of identity, the person shall be entitled to the recovery of reasonable attorneys' fees and costs from the judgment creditor incurred in releasing the person's property from a writ of execution, in addition to any other damages or penalties to which an aggrieved person may be entitled to by law, including the provisions of Division 4 (commencing with Section 720.010).

SEC. 13. Section 704.114 of the Code of Civil Procedure is amended to read:

704.114. (a) Notwithstanding any other provision of law, service of an earnings assignment order for support, or an order or notice to withhold income for child support on any public entity described in Section 704.110, other than the United States government, creates a lien on all employee contributions in the amount necessary to satisfy a support judgment as determined under Section 695.210 to the extent that the judgment remains enforceable.

(b) The public entity shall comply with any request for a return of employee contributions by an employee named in the order or notice to withhold by delivering the contributions to the clerk of the court in which the support order was awarded or last registered, unless the entity has received a certified copy of an order or administrative notice terminating the earnings assignment order for support.

(c) Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the receipt of the deposit to the parties and to the local child support agency enforcing any order pursuant to Section 17400 of the Family Code.

(d) Moneys received pursuant to this section are subject to any procedure available to enforce an order for support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the employee.

(e) A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of,

any order for support upon the making of a request for the return of employee contributions by an employee.

SEC. 14. Section 704.120 of the Code of Civil Procedure is amended to read:

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Benefits payable under Division 1 (commencing with Section 100) of the Unemployment Insurance Code.

(2) Incentives payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(3) Benefits payable under an employer's plan or system to supplement unemployment compensation benefits of the employees generally or for a class or group of employees.

(4) Unemployment benefits payable by a fraternal organization to its bona fide members.

(5) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) During the payment of benefits described in paragraph (1) of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, through the appropriate local child support agency, seek to apply the benefit payment to satisfy the judgment as provided by Section 17518 of the Family Code.

(e) During the payment of benefits described in paragraphs (2) to (5), inclusive, of subdivision (b) to a judgment debtor under a support judgment, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support as defined in Section 706.011 or any other applicable enforcement procedure. If the benefit is payable periodically, the amount to be withheld pursuant to the assignment order or other procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. Otherwise the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an assignment order under this subdivision an amount reflecting the actual cost of administration caused by the assignment order up to two dollars ($2) for each payment.

SEC. 15. Section 704.130 of the Code of Civil Procedure is amended to read:

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

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

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

SEC. 16. Section 704.160 of the Code of Civil Procedure is amended to read:

704.160. (a) Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. Except as specified in subdivision (b), after payment, the award is exempt.

(b) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor, the support judgment creditor may, through the appropriate local child support agency, seek to apply the workers' compensation temporary disability benefit payment to satisfy the support judgment as provided by Section 17404 of the Family Code.

(c) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor under a support judgment, including a judgment for reimbursement of public assistance, the judgment creditor may, directly or through the appropriate local child support agency, seek to apply the temporary disability benefit payments to satisfy the support judgment by an earnings assignment order for support, as defined in Section 5208 of the Family Code, or any other applicable enforcement procedure. The amount to be withheld pursuant to the earnings assignment order for support or other enforcement procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest dollar. Otherwise, the amount to be withheld shall be the amount the court determines under

subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an order assigning earnings under this subdivision an amount reflecting the actual cost of administration of this assignment, up to two dollars ($2) for each payment.

(d) Unless the provision or context otherwise requires, the following definitions govern the construction of this section.

(1) ''Judgment debtor'' or ''support judgment debtor'' means a person who is owing a duty of support.

(2) ''Judgment creditor'' or ''support judgment creditor'' means the person to whom support has been ordered to be paid.

(3) ''Support'' refers to an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to Section 17402 of the Family Code. It also includes past due support or arrearage when it exists.

SEC. 17. Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A ''withholding order for support'' is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) The local child support agency may issue a withholding order for support on a notice of levy pursuant to Section 17522 of the Family Code to collect a support obligation.

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

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

(3) The local child support agency shall serve upon the employer the withholding order for support, a copy of the order, and a notice informing the support obligor of the effect of the order and of his or her right to hearings and remedies provided in this chapter and in the Family Code. The notice shall be accompanied by the forms necessary to obtain an administrative review and a judicial hearing and instructions on how to file the forms. Within 10 days from the date of service, the employer shall deliver to the support obligor a copy of the withholding order for support, the forms to obtain an administrative review and judicial

hearing, and the notice. If the support obligor is no longer employed by the employer and the employer does not owe the support obligor any earnings, the employer shall inform the local child support agency that the support obligor is no longer employed by the employer.

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

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

(6) Nothing in this section prohibits the support obligor from seeking a judicial determination of arrearages pursuant to subdivision (c) of Section 17256 of the Family Code or from filing a motion for equitable division of earnings pursuant to Section 706.052 either prior to or after the administrative review provided by this section. Within five business days after receiving notice of the obligor having filed for judicial relief pursuant to this section, the local child support agency shall notify the employer to suspend withholding any disputed amount pending a determination by the court. The employer shall then adjust the withholding within not more than nine days of receiving the notice from the local child support agency.

(c) Notwithstanding any other provision of this chapter:

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

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

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both

a withholding order for support and another earnings withholding order simultaneously.

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

(5) Notwithstanding any other provision of law, an employer shall send all earnings withheld pursuant to a withholding order for support to the levying officer or the Child Support Centralized Collection and Distribution Unit as described in Section 17309 of the Family Code within the time period specified by federal law.

(6) Once the Child Support Centralized Collection and Distribution Unit as described in Section 17309 of the Family Code is operational, all support payments made pursuant to an earnings withholding order shall be made to that unit.

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

SEC. 18. Section 708.730 of the Code of Civil Procedure is amended to read:

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

(c) If the judgment is for support and related costs and money is owing and unpaid to the judgment debtor by a state agency, including, but not limited to, money owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code or as a result of the judgment debtor's winnings in the California State Lottery, and the local child support agency is enforcing the support obligation pursuant to

Section 17400 of the Family Code, the claim may be submitted as follows: The local child support agency may file the affidavit referred to in subdivision (a) without filing an abstract or certified copy of the judgment. In lieu thereof, the affidavit shall also state that an abstract of the judgment could be obtained. Where there is more than one judgment debtor, the local child support agency may include all the judgment debtors in a single affidavit. Separate affidavits need not be submitted for each judgment debtor. The affidavit need not on its face separately identify each judgment debtor or the exact amount required to satisfy the judgment, so long as it incorporates by reference forms or other automated data transmittals, as required by the Department of Child Support Services, which contain this information. Affidavits submitted pursuant to this subdivision by the local child support agency shall meet the standards and procedures prescribed by the state agency to which the affidavit is submitted, except that those affidavits submitted with respect to moneys owed and unpaid to the judgment debtor as a result of a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, shall meet the standards and procedures prescribed by the Franchise Tax Board.

In serving the notice required by subdivision (b), the Director of the Department of Child Support Services or his or her designee may act in lieu of the judgment creditor as to judgments enforced under this division.

(d) If the judgment is for child, spousal, or family support and related costs and money is owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or as a result of the judgment debtor's winnings in the California State Lottery, the judgment creditor may file with the court an abstract or a certified copy of the judgment ordering the payment of child, spousal, or family support, together with a request that the court issue a Notice of Support Arrearage, as provided in Section 708.780, to which any personal income tax refunds and lottery winnings owed the judgment debtor by the State of California will be subject. The request shall be accompanied by an affidavit, signed under penalty of perjury, which shall state that the judgment creditor desires the relief provided by this subdivision and shall state the exact amount then required to satisfy the judgment. In addition, the affidavit shall specify the beginning and ending dates of all

periods during which the arrearage for support occurred, specify the arrearage for each month, and state that the support is at least 90 days overdue or is overdue in an amount equal to 90 days of support. It shall also certify that the child or children are not recipients, and during the period for which payment is requested, were not recipients, of Aid to Families with Dependent Children and there was no assignment to a state or county agency of support and shall certify on information and belief that there is not current or past action by a district attorney pending for support or support enforcement on the judgment creditor's behalf.

The request shall have attached a proof of service showing that copies of the request, the affidavit, and the abstract or certified copy of the judgment ordering the payment of support have been served on the judgment debtor and the district attorney of the county in which the support judgment is entered. Service shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

This subdivision does not apply in any instance in which a district attorney initiated or participated as counsel in the action for support or if support is required to be paid through a district attorney's office.

The Department of Child Support Services shall, upon request, inform the Legislature of the use and effect of this subdivision on or before December 31, 2000.

This subdivision shall become operative on January 1, 1996, and shall become inoperative on December 31, 2000.

(e) For purposes of this section, ''support'' means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 19. Section 708.740 of the Code of Civil Procedure is amended to read:

708.740. (a) Except as provided in subdivision (e), if money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller. Where the affidavit is prepared under subdivision (c) of Section 708.730, the affidavit shall be filed with the Department of Child Support Services, and no abstract need be filed. Filing of the affidavit with the department shall be sufficient to require the Controller to transfer the funds claimed by the judgment debtor, notwithstanding that the claim of the judgment debtor has been filed with another state agency.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) Except as provided in subdivisions (d) and (e), to discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

(d) Where an affidavit stating the existence of a judgment for support has been submitted to the Department of Child Support Services, pursuant to subdivision (c) of Section 708.730, to discharge the claim of a judgment debtor, the Controller shall direct payment to the county agency designated by the local child support agency in his or her affidavit.

(e) Where the judgment is for support and the money owed is for lottery winnings or a refund of overpayment of tax, penalty, interest, or interest allowable with respect to an overpayment under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, and the support obligation is not being enforced pursuant to Section 17400 of the Family Code, the judgment creditor may file the abstract or certified copy of the judgment with the local child support agency of the county in which the support judgment is entered or registered. The local child support agency shall then file the claim of the judgment creditor pursuant to subdivision (c) of Section 708.730. When funds are received by the local child support agency, it shall discharge any claim of the judgment debtor by forwarding those sums to the clerk of the court pursuant to subdivision (c) of this section. Any and all notices otherwise required of a judgment creditor or the clerk of the court, and any litigation to enforce rights under this subdivision shall be the responsibility of the judgment creditor, the same as if service had been directly on the Controller without the intervention of the local child support agency.

(f) Where the claim of the judgment debtor is less than ten dollars ($10) and the claim of the judgment creditor arises under an affidavit filed pursuant to subdivision (c) of Section 708.730, the Controller may disregard the claim of the judgment creditor and forward any and all sums due to the judgment debtor. In the event that there is more than one claimant for a refund, the Franchise Tax Board shall have discretion in allocating the overpayment among claimants.

(g) Should two or more local child support agencies submit claims on behalf of a judgment creditor, the Controller in his or her discretion may select which claim or claims he or she shall honor.

(h) Any claims which are honored in behalf of a judgment creditor shall be considered as refunds of tax overpayments to the judgment debtor.

(i) For purposes of this section, ''support'' means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 20. Section 1218 of the Code of Civil Procedure is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars ($1,000), or he or she may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and

supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

SEC. 21. Section 113 is added to the Family Code, to read:

113. ''Property'' includes real and personal property and any interest therein.

SEC. 22. Section 150 of the Family Code is amended to read:

150. ''Support'' refers to a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to Section 17402. It also includes past due support or arrearage when it exists. ''Support,'' when used with reference to a minor child or a child described in Section 3901, includes maintenance and education.

SEC. 23. Section 290 of the Family Code is amended to read:

290. Subject to Section 291, a judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.

SEC. 24. Section 291 of the Family Code is repealed.

SEC. 25. Section 291 is added to the Family Code, to read:

291. A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

SEC. 26. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on

the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 27. Section 3555 of the Family Code is amended to read:

3555. Where support is ordered to be paid through the county officer designated by the court on behalf of a child or other party not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the designated county officer shall forward the support received to the designated payee within the time standards prescribed by federal law and the Department of Child Support Services.

SEC. 28. Section 3751.5 of the Family Code is amended to read:

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

(1) The child was born out of wedlock.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) For purposes of this section, ''insurer'' includes every health care service plan, self-insured welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), self-funded employer plan, disability insurer,

nonprofit hospital service plan, labor union trust fund, employer, and any other similar plan, insurer, or entity offering a health coverage plan.

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

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

SEC. 29. Section 3751.5 of the Family Code is amended to read:

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

(1) The child was born out of wedlock.

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

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

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

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

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

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

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

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

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

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

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

(1) Provide any information, including, but not limited to, the health insurance membership or identification card regarding the child, the evidence of coverage and disclosure form, and any other information provided to the covered parent about the child's health care coverage to the noncovered parent having custody of the child or any other person having custody of the child and to the local child support agency when requested by the local child support agency.

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

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

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

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

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

(g) For purposes of this section, the insurer shall notify the covered parent and noncovered parent having custody of the child or any other person having custody of the child in writing at any time that health insurance for the child is terminated.

(h) The requirements of subdivision (g) shall not apply unless the court, employer, or person having custody of the child provides the insurer with a qualified medical child support order that meets the requirements of subdivision (a) of Section 1169 of Title 29 of the United States Code, and that order includes an address for the noncovered parent or other person having custody of the child.

(i) The noncovered parent or person having custody of the child may contact the insurer, by telephone or in writing, and request information about the health insurance coverage for the child. Upon request of the noncovered parent or person having custody of the child, the insurer shall provide the requested information that is specific to the health insurance coverage for the child.

SEC. 30. Section 3752 of the Family Code is amended to read:

3752. (a) If the local child support agency has been designated as the assigned payee for child support, the court shall order the parent to notify the local child support agency upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

(b) The local child support agency shall obtain a completed medical form from the parent in accordance with Section 17422 and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the local child support agency is providing medical support enforcement services, the local child support agency shall provide the parent or person having custody of the child with information pertaining to the health insurance policy that has been secured for the child.

SEC. 31. Section 3761 of the Family Code is amended to read:

3761. (a) Upon application by a party or local child support agency in any proceeding where the court has ordered either or both parents to maintain health insurance coverage under Article 1 (commencing with Section 3750), the court shall order the employer of the obligor parent or other person providing health insurance to the obligor to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the earnings of the obligor unless the court makes a finding of good cause for not making the order.

(b) (1) The application shall state that the party or local child support agency seeking the assignment order has given the obligor a written notice of the intent to seek a health insurance coverage assignment order in the event of a default in instituting coverage required by court order on behalf of the parties' child and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days before the date of the filing of the application for the order. The written notice of the intent to seek an assignment order required by this subdivision may be given at the time of filing a petition or complaint for support or at any later time, but shall be given at least 15 days before the date of filing the application under this section. The obligor may at any time waive the written notice required by this subdivision.

(2) The party or local child support agency seeking the assignment order shall file a certificate of service showing the method and date of service of the order and the statements required under Section 3772 upon the employer or provider of health insurance.

(c) The total amount that may be withheld from earnings for all obligations, including health insurance assignments, is limited by subdivision (a) of Section 706.052 of the Code of Civil Procedure or Section 1673 of Title 15 of the United States Code, whichever is less.

SEC. 32. Section 3771 of the Family Code is amended to read:

3771. Upon request of the local child support agency the employer shall provide the following information to the local child support agency within 30 days:

(a) The social security number of the absent parent.

(b) The home address of the absent parent.

(c) Whether the absent parent has a health insurance policy and, if so, the policy names and numbers, and the names of the persons covered.

(d) Whether the health insurance policy provides coverage for dependent children of the absent parent who do not reside in the absent parent's home.

(e) If there is a subsequent lapse in health insurance coverage, the employer shall notify the local child support agency, giving the date the coverage ended, the reason for the lapse in coverage and, if the lapse is temporary, the date upon which coverage is expected to resume.

SEC. 33. Section 4006 of the Family Code is amended to read:

4006. In a proceeding for child support under this code, including, but not limited to, Division 17 (commencing with Section 17000), the court shall consider the health insurance coverage, if any, of the parties to the proceeding.

SEC. 34. Section 4009 of the Family Code is amended to read:

4009. Except as provided in Section 17402, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

SEC. 35. 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 local child support agency has joined in the stipulation by signing it in any case in which the local child support agency is providing services pursuant to Section 17400. The local child support agency 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. 36. Section 4200 of the Family Code is amended to read:

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

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose. Once the Child Support Centralized Collection and Distribution Unit is implemented pursuant to Section 17309, all payments shall be directed to the Child Support Centralized Collection and Distribution Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the welfare recipient in any proceeding to enforce the order.

SEC. 37. Section 4201 of the Family Code is amended to read:

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

(a) Direct that the payments shall be made to the county officer designated by the court for that purpose. Once the Child Support Centralized Collection and Distribution Unit is implemented pursuant to Section 17309, all payments shall be directed to the Child Support Centralized Collection and Distribution Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the minor children in any proceeding to enforce the order.

SEC. 38. Section 4202 of the Family Code is amended to read:

4202. (a) Notwithstanding any other provision of law, in a proceeding where the custodial parent resides in one county and the parent ordered to pay support resides in another county, the court may direct payment to be made to the county officer designated by the court for those purposes in the county of residence of the custodial parent, and may direct the local child support agency of either county to enforce the order.

(b) Civil enforcement by the local child support agency of the county of residence of the custodial parent, where the order is in the county of the noncustodial parent or any other county, may be brought in accordance with Section 4848. If the court directs the local child support agency of the county of residence of the noncustodial parent to enforce the order, the expenses of the local child support agency with respect to the enforcement is a charge upon the county of residence of the noncustodial parent.

SEC. 39. Section 4203 of the Family Code is amended to read:

4203. (a) Except as provided in Section 4202, expenses of the county officer designated by the court, and expenses of the local child support agency incurred in the enforcement of an order of the type described in Section 4200 or 4201, are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order of the type described in Section 4200 or 4201 are a charge upon the county where the process is served.

SEC. 40. Section 4204 of the Family Code is amended to read:

4204. Notwithstanding any other provision of law, in any proceeding where the court has made an order requiring the payment of child support to a person having custody of a child and the child support is subsequently assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code or the person having custody has requested the local child support agency to provide child support enforcement services pursuant to Section 17400, the local child support agency may issue a notice directing that the payments shall be made to the local child support agency, another county office, or the Child Support Centralized Collection Distribution Unit pursuant to Section 17309. The notice shall be served on both the support obligor and obligee in compliance with Section 1013 of the Code of Civil Procedure. The local child support agency shall file the notice in the action in which the support order was issued.

SEC. 41. Section 4205 of the Family Code is amended to read:

4205. Any notice from the local child support agency requesting a meeting with the support obligor for any purpose authorized under this part shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

SEC. 42. Section 4250 of the Family Code is amended to read:

4250. (a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations.

(2) The current system for obtaining, modifying, and enforcing child and spousal support orders is inadequate to meet the future needs of California's children due to burgeoning caseloads within local child support agencies and the growing number of parents who are representing themselves in family law actions.

(3) The success of California's child support enforcement program depends upon its ability to establish and enforce child support orders quickly and efficiently.

(4) There is a compelling state interest in creating an expedited process in the courts that is cost-effective and accessible to families, for establishing and enforcing child support orders in cases being enforced by the local child support agency.

(5) There is a compelling state interest in having a simple, speedy, conflict-reducing system, that is both cost-effective and accessible to families, for resolving all issues concerning children, including support, health insurance, custody, and visitation in family law cases that do not involve enforcement by the local child support agency.

(b) Therefore, it is the intent of the Legislature to: (1) provide for commissioners to hear child support cases being enforced by the local child support agency; (2) adopt uniform and simplified procedures for all child support cases; and (3) create an Office of the Family Law Facilitator in the courts to provide education, information, and assistance to parents with child support issues.

SEC. 43. Section 4251 of the Family Code is amended to read:

4251. (a) Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the local child support agency. The number of child support commissioners required in each county shall be determined by the Judicial Council as prescribed by paragraph (3) of subdivision (b) of Section 4252. All actions or proceedings filed by the local child support agency in a support action or proceeding in which enforcement services are being provided pursuant to Section 17400, for an order to establish, modify, or enforce child or spousal support, including actions to establish paternity, shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252. All actions or proceedings filed by a party other than the local child support agency to modify or enforce a support order established by the local child support agency or for which enforcement services are being provided pursuant to Section 17400 shall be referred for hearing to a child support

commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252.

(b) The commissioner shall act as a temporary judge unless an objection is made by the local child support agency or any other party. The Judicial Council shall develop a notice which shall be included on all forms and pleadings used to initiate a child support action or proceeding that advises the parties of their right to review by a superior court judge and how to exercise that right. The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. While acting as a temporary judge, the commissioner shall receive no compensation other than compensation as a commissioner.

(c) If any party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within 10 court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. Any party may waive his or her right to the review hearing at any time.

(d) The commissioner shall, where appropriate, do any of the following:

(1) Review and determine ex parte applications for orders and writs.

(2) Take testimony.

(3) Establish a record, evaluate evidence, and make recommendations or decisions.

(4) Enter judgments or orders based upon voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(5) Enter default orders and judgments pursuant to Section 4253.

(6) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to genetic tests.

(e) The commissioner shall, upon application of any party, join issues concerning custody, visitation, and protective orders in the action filed by the local child support agency, subject to Section 17404. After joinder, the commissioner shall:

(1) Refer the parents for mediation of disputed custody or visitation issues pursuant to Section 3170 of the Family Code.

(2) Accept stipulated agreements concerning custody, visitation, and protective orders and enter orders pursuant to the agreements.

(3) Refer contested issues of custody, visitation, and protective orders to a judge or to another commissioner for hearing. A child support

commissioner may hear contested custody, visitation, and restraining order issues only if the court has adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues pursuant to applicable federal requirements.

(f) The local child support agency shall be served notice by the moving party of any proceeding under this section in which support is at issue. Any order for support that is entered without the local child support agency having received proper notice shall be voidable upon the motion of the local child support agency.

SEC. 44. Section 4351 of the Family Code is amended to read:

4351. (a) In any proceeding where the court has entered an order pursuant to Section 4350, the court may also refer the matter of enforcement of the spousal support order to the local child support agency. The local child support agency may bring those enforcement proceedings it determines to be appropriate.

(b) Notwithstanding subdivision (a), in any case in which the local child support agency is required to appear on behalf of a welfare recipient in a proceeding to enforce an order requiring payment of child support, the local child support agency shall also enforce any order requiring payment to the welfare recipient of spousal support that is in arrears.

(c) Nothing in this section shall be construed to prohibit the district attorney or the local child support agency from bringing an action or initiating process to enforce or punish the failure to obey an order for spousal support under any provision of law that empowers the district attorney or the local child support agency to bring an action or initiate a process, whether or not there has been a referral by the court pursuant to this chapter.

(d) Any notice from the district attorney or the local child support agency requesting a meeting with the support obligor for any purpose authorized under this part shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

SEC. 45. Section 4352 of the Family Code is amended to read:

4352. (a) Insofar as expenses of the county officer designated by the court and expenses of the local child support agency incurred in the enforcement of an order referred by the court under this chapter exceed any service charge imposed under Section 279 of the Welfare and Institutions Code, the expenses are a charge upon the county where the proceedings are pending.

(b) Fees for service of process in the enforcement of an order referred by the court under this chapter are a charge upon the county where the process is served.

SEC. 45.5. Section 4502 of the Family Code is amended to read:

4502. (a) Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for

reimbursement that includes, but is not limited to, reimbursement arising under Section 17402 or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed.

(b) Although not required, a judgment described in subdivision (a) may be renewed pursuant to the procedure applicable to money judgments generally under Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. As provided in subdivision (a), the option of renewing the judgment has no effect on the enforceability of the amount due. An application for renewal of a judgment described in subdivision (a), whether or not payable in installments, may be filed:

(1) If the judgment has not previously been renewed as to past due amounts, at any time.

(2) If the judgment has previously been renewed the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

SEC. 46. Section 4506.3 of the Family Code is amended to read:

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

SEC. 47. Section 4573 of the Family Code is amended to read:

4573. If support is ordered to be paid through the local child support agency on behalf of a child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the local child support agency shall forward the support received pursuant to this chapter to the custodial parent or other person having care or control of the child or children involved.

SEC. 48. Section 4701 of the Family Code is amended to read:

4701. (a) The Department of Child Support Services shall administer a statewide automated system for the reporting of court-ordered child support obligations to credit reporting agencies.

(b) The department shall design and develop standards for the system in conjunction with representatives of the California Family Support Council and the credit reporting industry.

(c) The standards for the system shall be consistent with credit reporting industry standards and reporting format and with the department's statewide central automated system for support enforcement.

(d) The standards shall include, but not be limited to, all of the following:

(1) Court-ordered child support obligations and delinquent payments, including amounts owed and by whom. The California local child support agencies, on a monthly basis, shall update this information, and then submit it to the department which, in turn, shall consolidate and transmit it to the credit reporting agencies.

(2) Before the initial reporting of a court-ordered child support obligation or a delinquent payment, the local child support agency shall attempt to notify the obligor parent of the proposed action and give 30 days to contest in writing the accuracy of the information, or to pay the arrearage, if any, in compliance with the due process requirements of the laws of this state.

(e) The department and the local child support agencies are responsible for the accuracy of information provided pursuant to this section, and the information shall be based upon the data available at the time the information is provided. Each of these organizations and the credit reporting agencies shall follow reasonable procedures to ensure maximum possible accuracy of the information provided. Neither the department, nor the local child support agencies are liable for any consequences of the failure of a parent to contest the accuracy of the information within the time allowed under paragraph (2) of subdivision (d).

SEC. 49. Section 4721 of the Family Code is amended to read:

4721. (a) This chapter applies only to installments of child support that are due on or after January 1, 1992.

(b) It is the intent of the Legislature that the penalties provided under this chapter shall be applied in egregious instances of noncompliance with child support orders.

(c) It is the intent of the Legislature that for the purposes of this chapter, payments made through wage assignments are considered timely regardless of the date of receipt by the local child support agency or obligee.

SEC. 50. Section 4729 of the Family Code is amended to read:

4729. The local child support agency or any other agency providing support enforcement services pursuant to Title IV-D of the federal Social Security Act may not enforce child support obligations utilizing the penalties provided for by this chapter.

SEC. 51. Section 5000 of the Family Code is amended to read:

5000. (a) When a petition or comparable pleading pursuant to this chapter is filed in a court of this state, the local child support agency 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 local child support agency 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. 52. Section 5001 of the Family Code is amended to read:

5001. (a) If, prior to filing, a petition or comparable pleading pursuant to this chapter is received by the local child support agency 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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency 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 local child support agency, 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. 53. Section 5002 of the Family Code is amended to read:

5002. (a) In an action pursuant to this chapter prosecuted by the local child support agency 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 local child support agency, the local child support agency 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 for Region I provided in Sections 11452 and 11452.018 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 17432.

SEC. 54. Section 5100 of the Family Code is amended to read:

5100. Notwithstanding Section 290, a child, family, or spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 17522 of this code without prior court approval.

SEC. 55. Section 5101 of the Family Code is repealed.

SEC. 56. Section 5102 of the Family Code is repealed.

SEC. 57. Section 5214 of the Family Code is amended to read:

5214. ''Obligee'' or ''assigned obligee'' means either the person to whom support has been ordered to be paid, the local child support agency, or other person designated by the court to receive the payment. The local child support agency is the obligee for all IV-D Cases as defined under Section 5212 or in which an application for services has been filed under Part D (commencing with Section 651) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D or IV-E of the Social Security Act).

SEC. 57.3. Section 5230 of the Family Code is amended to read:

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

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

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

(b) An earnings assignment order for support shall be issued, and shall be effective and enforceable pursuant to Section 5231, notwithstanding the absence of the name, address, or other identifying information regarding the obligor's employer.

SEC. 57.5. Section 5231 of the Family Code is amended to read:

5231. Unless stayed pursuant to Article 4 (commencing with Section 5260), an assignment order is effective and binding upon any existing or future employer of the obligor upon whom a copy of the order is served in compliance with Sections 5232 and 5233, notwithstanding the absence of the name, address, or other identifying information regarding the obligor's employer, or the inclusion of incorrect information regarding the support obligor's employer.

SEC. 58. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the

support that was withheld by the employer but not received by the obligee. If the employer withheld the support but failed to forward the payments to the obligee, the employer shall be liable for the payments, including interest, as provided in Section 5241.

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

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

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

(e) Once the Child Support Centralized Collection and Distribution Unit as required by Section 17309 is operational, the employer shall send all earnings withheld pursuant to this chapter to the Child Support Centralized Collection and Distribution Unit instead of the obligee.

SEC. 59. Section 5237 of the Family Code is amended to read:

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

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

(c) If the obligee is receiving support payments from the Child Support Centralized Collection and Distribution Unit as required by Section 17309, the obligee shall notify the Child Support Centralized Collection and Distribution Unit instead of the employer of the obligor as provided in subdivision (a).

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

SEC. 60. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee

for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.

(b) If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee.

(c) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(d) If an employer withholds support, as required by the assignment order, but fails to forward the support to the obligee, the local child support agency shall take appropriate action to collect the withheld sums from the employer. This provision shall not be construed to expand or limit the duties and obligations of the Labor Commissioner, as set forth in Section 200 and following of the Labor Code.

SEC. 61. Section 5244 of the Family Code is amended to read:

5244. A reference to the local child support agency in this chapter applies only when the local child support agency is otherwise ordered or required to act pursuant to law. Nothing in this chapter shall be deemed to mandate additional enforcement or collection duties upon the local child support agency beyond those otherwise imposed by law.

SEC. 62. Section 5245 of the Family Code is amended to read:

5245. Nothing in this chapter limits the authority of the local child support agency to use any other civil and criminal remedies to enforce support obligations, regardless of whether or not the child or the obligee who is the parent, guardian, or other person entitled to receive payment is the recipient of welfare moneys.

SEC. 62.3. Section 5246 of the Family Code is amended to read:

5246. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the local child support agency pursuant to Section 17400.

(b) In lieu of an earnings assignment order signed by a judicial officer, the local child support agency may serve on the employer a notice of assignment in the manner specified in Section 5232. An order/notice to withhold income for child support shall have the same force and effect as an earnings assignment order signed by a judicial officer. An order/notice to withhold income for child support, when used under this section, shall be considered a notice and shall not require the signature of a judicial officer.

(c) Pursuant to Section 666 of Title 42 of the United States Code, the federally mandated order/notice to withhold income for child support shall be used for the purposes described in this section.

(d) If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the local child support agency may send an order/notice to withhold income for child support that shall be used for the purposes described in this section directly to the employer which specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied towards liquidation of the arrearages not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code. The Franchise Tax Board, in support of its responsibility for accounts receivable management of delinquent child support obligations pursuant to Section 17501, may send an order/notice to withhold income for child support directly to the employer that specifies the updated arrearage amount and directs the employer to withhold an additional amount to be applied to the liquidation of the arrearages. Any order/notice to withhold income for child support issued by the Franchise Tax Board shall be issued in the name of the local child support agency.

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

(1) If at the hearing the obligor establishes that he or she is not the obligor or good cause or an alternative arrangement as provided in Section 5260, the court may order that service of the order/notice to withhold income for child support be quashed. If the court quashes service of the order/notice to withhold income for child support, the local child support agency shall notify the employer within 10 days.

(2) If the obligor contends at the hearing that the payment of arrearages at the rate specified in the order/notice to withhold income for child support is excessive or that the total arrearages owing is incorrect, and if it is determined that payment of the arrearages at the rate specified in this section creates an undue hardship upon the obligor or that the withholding would exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code Annotated, the rate at which the arrearages must be paid shall be reduced to a rate that is fair and reasonable considering the circumstances of the parties and the best interest of the child. If it is determined at a hearing that the total amount of arrearages calculated is erroneous, the court shall modify the amount calculated to the correct amount. If the court modifies the total amount of arrearages owed or reduces the monthly payment due on the arrearages, the local child support agency shall serve the employer with an amended order/notice to withhold income for child support within 10 days.

(f) If an obligor's current support obligation has terminated by operation of law, the local child support agency may serve an order/notice to withhold income for child support on the employer which directs the employer to continue withholding from the obligor's earnings an amount to be applied towards liquidation of the arrearages, not to exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code, until such time that the employer is notified by the local child support agency that the arrearages have been paid in full. The employer shall provide the obligor with a copy of the order/notice to withhold income for child support and a blank form that the obligor may file with the court to request a hearing to modify or quash the assignment with instructions on how to file the form and obtain a hearing date. The obligor shall be entitled to the same rights to a hearing as specified in subdivision (e).

(g) The local child support agency shall retain a copy of the order/notice to withhold income for child support and shall file a copy with the court whenever a hearing concerning the order/notice to withhold income for child support is requested.

(h) The local child support agency may transmit an order/notice to withhold income for child support and other forms required by this section to the employer through electronic means.

SEC. 63. Section 5247 of the Family Code is amended to read:

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

SEC. 64. Section 5252 of the Family Code is amended to read:

5252. (a) An assignment order under this article may be issued only upon an application signed under penalty of perjury by the obligee that the obligor is in default in support payments in a sum equal to the amount of support payable for one month, for any other occurrence specified by the court in the support order, or earlier by court order if requested by the local child support agency or the obligor.

(b) If the order for support does not contain a provision for an earnings assignment order for support, the application shall state that the obligee has given the obligor a written notice of the obligee's intent to seek an assignment order if there is a default in support payments and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days before the date of the filing of the application. The written notice of the intent to seek an assignment order may be given at any time, including at the time of filing a petition or complaint in which support is requested or at any time subsequent thereto. The obligor may at any time waive the written notice required by this subdivision.

(c) In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration or notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

SEC. 65. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2) of subdivision (b). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 3 (commencing with Section 4820) of Chapter 6 shall not be stayed pursuant to this subdivision.

(b) For purposes of this section, good cause or an alternative arrangement for staying an assignment order is as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that provides for payment of the support obligation as ordered other than through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the local child support agency in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 5261 upon violation of the agreement.

SEC. 66. Section 5261 of the Family Code is amended to read:

5261. (a) If service of the assignment order has been ordered stayed, the stay shall terminate pursuant to subdivision (b) upon the obligor's failure to make timely support payments or earlier by court order if requested by the local child support agency or by the obligor. The

stay shall terminate earlier by court order if requested by any other obligee who can establish that good cause, as defined in Section 5260, no longer exists.

(b) To terminate a stay of the service of the assignment order, the obligee shall file a declaration signed under penalty of perjury by the obligee that the obligor is in arrears in payment of any portion of the support. At the time of filing the declaration, the stay shall terminate by operation of law without notice to the obligor.

(c) In addition to any other penalty provided by law, the filing of a declaration under subdivision (b) with knowledge of the falsity of its contents is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

SEC. 67. Section 5280 of the Family Code is amended to read:

5280. If the obligee making the application under this chapter also states that the whereabouts of the obligor or the identity of the obligor's employer is unknown to the party to whom support has been ordered to be paid, the local child support agency shall do both of the following:

(a) Contact the California parent locator service maintained by the Department of Justice in the manner prescribed in Section 17506.

(b) Upon receiving the requested information, notify the court of the last known address of the obligor and the name and address of the obligor's last known employer.

SEC. 68. Section 5600 of the Family Code is amended to read:

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

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

SEC. 69. Section 5601 of the Family Code is amended to read:

5601. (a) When the local child support agency is responsible for the enforcement of a support order pursuant to Section 17400, the local child support agency may register a support order made in another county by utilizing the procedures set forth in Section 5602 or by filing all of the following in the superior court of his or her county:

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

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

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

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

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

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

(e) Upon registration, the clerk of the court shall forward a notice of registration to the courts in other counties and states in which the original order for support and any modifications were issued or registered. No further proceedings regarding the obligor's support obligations shall be filed in other counties.

(f) The procedure prescribed by this section may also be used to register support or wage and earnings assignment orders of other California jurisdictions that previously have been registered for purposes of enforcement only pursuant to the Uniform Interstate Family Support Act (Chapter 6 (commencing with Section 4900)) in another California county. The local child support agency may register such an order by filing an endorsed file copy of the registered California order plus any subsequent orders, including procedural amendments.

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

SEC. 70. Section 5602 of the Family Code is amended to read:

5602. (a) An obligee other than the local child support agency may register an order issued in this state using the same procedures specified in subdivision (a) of Section 5601, except that the obligee shall prepare and file the statement of registration. The statement shall be verified and signed by the obligee showing the mailing address of the obligee, the last known place of residence or mailing address of the obligor, and a list of

other states and counties in California in which, to the obligee's knowledge, the original order of support and any modifications are registered.

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

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

SEC. 71. Section 5603 of the Family Code is amended to read:

5603. (a) An obligor shall have 20 days after the service of notice of the registration of a California order of support in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section, there shall be no joinder of actions, coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying California support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the local child support agency, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not file the motion within 20 days, the registered California support order and all other documents filed pursuant to subdivision (a) of Section 5601 or Section 5602 are confirmed.

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

stay enforcement of the order for an appropriate period if the obligor furnishes security for payment of support.

SEC. 72. Section 7558 of the Family Code is amended to read:

7558. (a) This section applies only to cases where support enforcement services are being provided by the local child support agency pursuant to Section 17400.

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

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

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

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

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

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

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

(e) Nothing in this section prohibits any person who has been ordered by the local child support agency to submit to genetic tests pursuant to this section from filing a notice of motion with the court in the action or proceeding in which paternity is a relevant fact seeking relief from the local child support agency's order to submit to genetic tests. In that event, the court shall resolve the issue of whether genetic tests should be ordered as provided in Section 7551. If any person refuses to submit to the tests after receipt of the administrative order pursuant to this section and fails to seek relief from the court from the administrative order either prior to the scheduled tests or within 10 days after the tests are scheduled, the court may resolve the question of paternity against that person or

enforce the administrative order if the rights of others or the interest of justice so require. Except as provided in subdivision (c), a person's refusal to submit to tests ordered by the local child support agency is admissible in evidence in any proceeding to determine paternity if a notice of motion is not filed within the timeframes specified in this subdivision.

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

SEC. 73. Section 7573 of the Family Code is amended to read:

7573. Except as provided in Sections 7575, 7576, and 7577, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.

SEC. 74. Section 7574 of the Family Code is amended to read:

7574. (a) The voluntary declaration of paternity shall be executed on a form developed by the Department of Child Support Services in consultation with the State Department of Health Services, the California Family Support Council, and child support advocacy groups.

(b) The form described in subdivision (a) shall contain, at a minimum, the following:

(1) The name and the signature of the mother.

(2) The name and the signature of the father.

(3) The name of the child.

(4) The date of birth of the child.

(5) A statement by the mother that she has read and understands the written materials described in Section 7572, that the man who has signed the voluntary declaration of paternity is the only possible father, and that she consents to the establishment of paternity by signing the voluntary declaration of paternity.

(6) A statement by the father that he has read and understands the written materials described in Section 7572, that he understands that by signing the voluntary declaration of paternity he is waiving his rights as described in the written materials, that he is the biological father of the child, and that he consents to the establishment of paternity by signing the voluntary declaration of paternity.

(7) The name and the signature of the person who witnesses the signing of the declaration by the mother and the father.

SEC. 75. Section 7575 of the Family Code is amended to read:

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

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

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

(B) The local child support agency's authority under this subdivision is limited to those circumstances where there is a conflict between a voluntary acknowledgement of paternity and a judgment of paternity or a conflict between two or more voluntary acknowledgments of paternity.

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

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil

Procedure. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

(2) The parent or local child support agency seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

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

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

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

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

SEC. 76. Section 7630 of the Family Code is amended to read:

7630. (a) A child, the child's natural mother, or a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

SEC. 77. Section 7634 of the Family Code is amended to read:

7634. The local child support agency may, in the local child support agency's discretion, bring an action under this chapter in any case in which the local child support agency believes it to be appropriate.

SEC. 78. Section 10008 of the Family Code is amended to read:

10008. (a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a local child support agency pursuant to Section 17400.

(b) In cases in which the services of the local child support agency are provided pursuant to Section 17400, either parent may utilize the services of the family law facilitator that are specified in Section 10004. In order for a custodial parent who is receiving the services of the local child support agency pursuant to Section 17400 to utilize the services specified in Section 10005 relating to support, the custodial parent must obtain written authorization from the local child support agency. It is not the intent of the Legislature in enacting this section to limit the duties of local child support agencies with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.

SEC. 78.3. Section 17000 of the Family Code is amended to read:

17000. The definitions contained in this section, and definitions applicable to Division 9 (commencing with Section 3500), shall govern the construction of this division, unless the context requires otherwise.

(a) ''Child support debt'' means the amount of money owed as child support pursuant to a court order.

(b) ''Child support order'' means any court order for the payment of a set or determinable amount of support by a parent or a court order requiring a parent to provide for health insurance coverage. ''Child

support order'' includes any court order for spousal support or for medical support to the extent these obligations are to be enforced by a single state agency for child support under Title IV-D.

(c) ''Court'' means any superior court of this state and any court or tribunal of another state that has jurisdiction to determine the liability of persons for the support of another person.

(d) ''Court order'' means any judgment, decree, or order of any court of this state that orders the payment of a set or determinable amount of support by a parent. It does not include any order or decree of any proceeding in which a court did not order support.

(e) ''Department'' means the Department of Child Support Services.

(f) ''Dependent child'' means any of the following:

(1) Any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) Any unmarried person who is at least 18 years of age but who has not reached his or her 19th birthday, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.

(g) ''Director'' means the Director of Child Support Services or his or her authorized representative.

(h) ''Local child support agency'' means the family support or child support division, unit, or bureau of the district attorney's office and, after transition pursuant to Section 17305, means the new county department of child support services created pursuant to this chapter and with which the department has entered into a cooperative agreement, to secure child and spousal support, medical support, and determine paternity.

(i) ''Parent'' means the natural or adoptive father or mother of a dependent child, and includes any person who has an enforceable obligation to support a dependent child.

(j) ''Public assistance'' means any amount paid under the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), or any Medi-Cal benefit, for the benefit of any dependent child or the caretaker of a child.

(k) ''Public assistance debt'' means any amount paid under the California Work Opportunity and Responsibility to Kids Act, contained in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, for the benefit of any dependent child or the caretaker of a child for whom the department is authorized to seek recoupment under this division, subject to applicable federal law.

(*l*) ''Title IV-D'' or ''IV-D'' means Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 79. Section 17212 of the Family Code is amended to read:

17212. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 17604 and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this division, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the party, a good cause claim under Section 11477.04 of the Welfare and Institutions Code has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the party or the child. When a local child support agency is prohibited from releasing information pursuant to this subdivision, the information shall be omitted from any pleading or document to be submitted to the court and this subdivision shall be cited in the pleading or other document as the authority for the omission. The information shall be released only upon an order of the court pursuant to paragraph (6) of subdivision (c).

(3) Notwithstanding any other provision of law, a proof of service filed by the local child support agency shall not disclose the address where service of process was accomplished. Instead, the local child

support agency shall keep the address in its own records. The proof of service shall specify that the address is on record at the local child support agency and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c). The local child support agency shall, upon request by a party served, release to that person the address where service was effected.

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents, and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 of Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the local child support agency and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the

court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) ''Administration and implementation of the child and spousal support enforcement program,'' as used in this division, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this division, ''obligor'' means any person owing a duty of support.

(3) As used in this division, ''putative parent'' shall refer to any person reasonably believed to be the parent of a child for whom the local child support agency is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 17400.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 80. Section 17304 of the Family Code is amended to read:

17304. To address the concerns stated by the Legislature in Section 17303, each county shall establish a new county department of child support services. Each department is also referred to in this division as the local child support agency. The local child support agency shall be separate and independent from any other county department and shall be responsible for promptly and effectively establishing, modifying, and

enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall refer all cases requiring criminal enforcement services to the district attorney and the district attorney shall prosecute those cases, as appropriate. If a district attorney fails to comply with this section, the director shall notify the Attorney General and the Attorney General shall take appropriate action to secure compliance. The director shall be responsible for implementing and administering all aspects of the state plan that direct the functions to be performed by the local child support agencies relating to their Title IV-D operations. In developing the new system, all of the following shall apply:

(a) The director shall negotiate and enter into cooperative agreements with county and state agencies to carry out the requirements of the state plan and provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required pursuant to Section 654 of Title 42 of the United States Code. The cooperative agreements shall require that the local child support agencies are reasonably accessible to the citizens of each county and are visible and accountable to the public for their activities. The director, in consultation with the impacted counties, may consolidate the local child support agencies, or any function of the agencies, in more than one county into a single local child support agency, if the director determines that the consolidation will increase the efficiency of the state Title IV-D program and each county has at least one local child support office accessible to the public.

(b) The director shall have direct oversight and supervision of the Title IV-D operations of the local child support agency, and no other local or state agency shall have any authority over the local child support agency as to any function relating to its Title IV-D operations. The local child support agency shall be responsible for the performance of child support enforcement activities required by law and regulation in a manner prescribed by the department. The administrator of the local child support agency shall be responsible for reporting to and responding to the director on all aspects of the child support program.

(c) Nothing in this section prohibits the local child support agency, with the prior approval of the director, from entering into cooperative arrangements with other county departments, as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation submitted to the department and approved by the director. The local child support agency may not enter into a cooperative agreement or contract with any county department or independently elected official, including the office of the district attorney, to run,

supervise, manage, or oversee the Title IV-D functions of the local child support agency. Until September 1, 2004, the local child support agency may enter into a cooperative agreement or contract of restricted scope and duration with a district attorney to utilize individual attorneys as necessary to carry out limited attorney services. Any cooperative agreement or contract for the attorney services shall be subject to approval by the department and contingent upon a written finding by the department that either the relatively small size of the local child support agency program, or other serious programmatic needs, arising as a result of the transition make it most efficient and cost-effective to contract for limited attorney services. The department shall ensure that any cooperative agreement or contract for attorney services provides that all attorneys be supervised by, and report directly to, the local child support agency, and comply with all state and federal child support laws and regulations. The office of the Legislative Analyst shall review and assess the efficiency and effectiveness of any such cooperative agreement or contract, and shall report its findings to the Legislature by January 1, 2004. Within 60 days of receipt of a plan of cooperation or contract from the local child support agency, the department shall either approve the plan of cooperation or contract or notify the agency that the plan is denied. If an agency is notified that the plan is denied, the agency shall have the opportunity to resubmit a revised plan of cooperation or contract. If the director fails to respond in writing within 60 days of receipt, the plan shall otherwise be deemed approved. Nothing in this section shall be deemed an approval of program costs relative to the cooperative arrangements entered into by the counties with other county departments.

(d) In order to minimize the disruption of services provided and to capitalize on the expertise of employees, the director shall create a program that builds on existing staff and facilities to the fullest extent possible. All assets of the family support division in the district attorney's office shall become assets of the local child support agency.

(e) (1) (A) Except as provided in subparagraph (B), all employees and other personnel who serve the office of the district attorney and perform child support collection and enforcement activities shall become the employees and other personnel of the county child support agency at their existing or equivalent classifications, and at their existing salaries and benefits that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, and health and pension plans.

(B) The IV-D director is entitled to become an employee of the local child support agency or may be selected as the administrator pursuant to the provisions of subdivision (f).

(2) Permanent employees of the office of the district attorney on the effective date of this chapter shall be deemed qualified, and no other qualifications shall be required for employment or retention in the county child support agency. Probationary employees on the effective date of this chapter shall retain their probationary status and rights, and shall not be deemed to have transferred, so as to require serving a new probationary period.

(3) Employment seniority of an employee of the office of the district attorney on the effective date of this chapter shall be counted toward seniority in the county child support agency and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(4) An employee organization that has been recognized as the representative or exclusive representative of an established appropriate bargaining unit of employees who perform child support collection and enforcement activities shall continue to be recognized as the representative or exclusive representative of the same employees of the county.

(5) An existing memorandum of understanding or agreement between the county or the office of the district attorney and the employee organization shall remain in effect and be fully binding on the parties involved for the term of the agreement.

(6) Nothing in this section shall be construed to limit the rights of employees or employee organizations to bargain in good faith on matters of wages, hours, or other terms and conditions of employment, including the negotiation of workplace standards within the scope of bargaining as authorized by state and federal law.

(7) (A) Except as provided in subparagraph (B), a public agency shall, in implementing programs affected by the act of addition or amendment of this chapter to this code, perform program functions exclusively through the use of civil service employees of the public agency.

(B) Prior to transition from the district attorney to the local child support agency under Section 17305, the district attorney may continue existing contracts and their renewals, as appropriate. After the transition under Section 17305, any contracting out of program functions shall be approved by the director consistent with Section 31000 and following of the Government Code, except as otherwise provided in subdivision (c) with regard to attorney services. The director shall approve or disapprove a proposal to contract out within 60 days. Failure of the director to respond to a request to contract out within 60 days after receipt of the request shall be deemed approval, unless the director submits an extension to respond, which in no event shall be longer than 30 days.

(f) The administrator of the local child support agency shall be an employee of the county selected by the board of supervisors, or in the case of a city and county, selected by the mayor, pursuant to the qualifications established by the department. The administrator may hire staff, including attorneys, to fulfill the functions required by the agency and in conformity with any staffing requirements adopted by the department, including all those set forth in Section 17306. All staff shall be employees of the county and shall comply with all local, state, and federal child support laws, regulations, and directives.

SEC. 81. Section 17400 of the Family Code 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) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(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. Except as provided in paragraph (2) of subdivision (a) of Section 17402, 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 or her 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.

(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 accounts receivable management of child support delinquencies to the Franchise Tax Board under Section 17501 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 for accounts receivable management 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 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.

(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. 82. Section 17400.5 of the Family Code is repealed.

SEC. 83. Section 17401 of the Family Code, as added by Chapter 653 of the Statutes of 1999, is amended to read:

17401. If the parent who is receiving support enforcement services provides to the local child support agency substantial, credible, information regarding the residence or work address of the support obligor, the agency shall initiate an establishment or enforcement action and serve the defendant, if service is required, within 60 days and inform the parent in writing when those actions have been taken. If the address or any other information provided by the support obligee is determined by the local child support agency to be inaccurate and if, after reasonable diligence, the agency is unable to locate and serve the support obligor within that 60-day period, the local child support agency shall inform the support obligee in writing of those facts. The requirements of this section shall be in addition to the time standards established by the Department of Child Support Services pursuant to subdivision (k) of Section 17400.

SEC. 84. Section 17401 of the Family Code, as added by Chapter 803 of the Statutes of 1999, is amended and renumbered to read:

17401.5. (a) All of the following shall include notice of, and information about, the child support service hearings available pursuant to Section 17801, provided that there is federal financial participation available as set forth in subdivision (j) of Section 17801:

(1) The booklet required by subdivision (a) of Section 17434.

(2) 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 17801 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.

Notice of and information about the child support service hearings and the child support complaint resolution process required under Section 17800 shall be easily accessible and shall be provided in a single section of the booklet.

SEC. 84.3. Section 17402 of the Family Code is amended to read:

17402. (a) In any case of separation or desertion of a parent or parents from a child or children that results in aid under Chapter 2

(commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction; or in the absence of a court order, the amount specified in paragraph (2).

(2) For all cases filed on or after January 1, 2000, the amount of support that would have been specified in an order for the support and maintenance of the family during the period of separation or desertion, but not to exceed one year prior to the date of the filing of the petition or complaint. However, the amount in excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by the parent directly to the custodian of the child or to the local child support agency of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The local child support agency shall take appropriate action pursuant to this section as provided in subdivision (*l*) of Section 17400. The local child support agency may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the noncustodial parents' incomes and placing the figure obtained in the column for noncustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the local child support agency.

SEC. 84.5. Section 17404 of the Family Code is amended to read:

17404. (a) Notwithstanding any other statute, in any action brought by the local child support agency for the support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. The parent who has requested or is receiving support enforcement services of the local child support agency shall not be a necessary party to the action but may be subpoenaed as a witness. Except as provided in subdivision (e), in an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues

shall be limited strictly to the question of parentage, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or parentage pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties.

(b) Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 17402, if at issue, may be rendered pursuant to a noticed motion, that shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

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

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

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

(e) (1) After a support order, including a temporary support order and an order for medical support only, has been entered in an action brought pursuant to this section, the parent who has requested or is receiving support enforcement services of the local child support agency shall become a party to the action brought pursuant to this section, only in the

manner and to the extent provided by this section, and only for the purposes allowed by this section.

(2) Notice of the parent's status as a party shall be given to the parent by the local child support agency in conjunction with the notice required by subdivision (e) of Section 17406. The complaint shall contain this notice. Service of the complaint on the parent in compliance with Section 1013 of the Code of Civil Procedure, or as otherwise provided by law, shall constitute compliance with this section. In all actions commenced under the procedures and forms in effect on or before December 31, 1996, the parent who has requested or is receiving support enforcement services of the local child support agency shall not become a party to the action until he or she is joined as a party pursuant to an ex parte application or noticed motion for joinder filed by the local child support agency or a noticed motion filed by either parent. The local child support agency shall serve a copy of any order for joinder of a parent obtained by the local child support agency's application on both parents in compliance with Section 1013 of the Code of Civil Procedure.

(3) Once both parents are parties to an action brought pursuant to this section in cases where Title IV-D services are currently being provided, the local child support agency shall be required, within five days of receipt, to mail the nonmoving party in the action all pleadings relating solely to the support issue in the action that have been served on the local child support agency by the moving party in the action, as provided in subdivision (f) of Section 17406. There shall be a rebuttable presumption that service on the local child support agency consistent with the provisions of this paragraph constitutes valid service on the moving party. Where this procedure is used to effectuate service on the nonmoving party, the pleadings shall be served on the local child support agency not less than 30 days prior to the hearing.

(4) The parent who has requested or is receiving support enforcement services of the local child support agency is a party to an action brought under this section for issues relating to the support, custody, and visitation of a child, and for restraining orders, and for no other purpose. The local child support agency shall not be required to serve or receive service of papers, pleadings, or documents, or participate in, or attend any hearing or proceeding relating to issues of custody or visitation, except as otherwise required by law. Orders concerning custody and visitation may be made in an action pursuant to this subdivision only if orders concerning custody and visitation have not been previously made by a court of competent jurisdiction in this state or another state and the court has jurisdiction and is the proper venue for custody and visitation determinations. All issues regarding custody and visitation shall be heard and resolved in the manner provided by this code. Except as otherwise provided by law, the local child support agency shall control

support and parentage litigation brought pursuant to this section, and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the local child support agency close his or her case and the case has been closed in accordance with state and federal regulation or policy.

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

(2) A parent who has requested or is receiving support enforcement services of the local child support agency may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the local child support agency with the written consent of the local child support agency. At least 30 days prior to filing an independent enforcement action, the parent shall provide the local child support agency with written notice of the parent's intent to file an enforcement action that includes a description of the type of enforcement action the parent intends to file. Within 30 days of receiving the notice, the local child support agency shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that the local child support agency objects to the parent filing the proposed independent enforcement action. The local child support agency may object only if the local child support agency is currently using an administrative or judicial method to enforce the support obligation or if the proposed independent enforcement action would interfere with an investigation being conducted by the local child support agency. If the local child support agency does not respond to the parent's written notice within 30 days, the local child support agency shall be deemed to have given consent.

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

this section shall be voidable upon the motion of the local child support agency.

(g) Any notice from the local child support agency requesting a meeting with the support obligor for any purpose authorized under this section shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

(h) For the purpose of this section, ''a parent who is receiving support enforcement services'' includes a parent who has assigned his or her rights to support pursuant to Section 11477 of the Welfare and Institutions Code.

(i) The Judicial Council shall develop forms to implement this section.

SEC. 84.7. Section 17406 of the Family Code is amended to read:

17406. (a) In all actions involving paternity or support, including, but not limited to, other proceedings under this code, and under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, the local child support agency and the Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the local child support agency or Attorney General and any person by virtue of the action of the local child support agency or the Attorney General in carrying out these statutory duties.

(b) Subdivision (a) is declaratory of existing law.

(c) In all requests for services of the local child support agency or Attorney General pursuant to Section 17400 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the local child support agency or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the local child support agency or Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the local child support agency or Attorney General and those persons, and that no such representation or relationship shall arise if the local child support agency or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the local child support agency or

Attorney General may provide support enforcement services to the other parent in the future.

(d) The local child support agency or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 17400 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2 of the Welfare and Institutions Code. This notice shall include notification to the recipient of services under Section 17400 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the local child support agency, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The local child support agency or, if appropriate, the Attorney General shall serve a copy of the complaint for paternity or support, or both, on recipients of support services under Section 17400, as specified in paragraph (2) of subdivision (e) of Section 17404. A notice shall accompany the complaint that informs the recipient that the local child support agency or Attorney General may enter into a stipulated order resolving the complaint, and that the recipient shall assist the prosecuting attorney, by sending all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) (A) The local child support agency or Attorney General shall provide written notice to recipients of services under Section 17400 of the initial date and time, and purpose of every hearing in a civil action for paternity or support.

(B) Once the parent who has requested or is receiving support enforcement services becomes a party to the action pursuant to subdivision (e) of Section 17404, in lieu of the above, the local child support agency or Attorney General shall serve on a parent all pleadings relating to support that have been served on the local child support agency by the other parent. The pleading shall be accompanied by a notice.

(C) The notice provided subject to subparagraphs (A) and (B) shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The local child support agency does not represent you or your children. You may have information about the other parent, such as information about his or her income or assets that will not be presented to the court unless you attend the hearing. You have the right to attend the hearing and to be heard in court and tell the court what you think the

court should do with the child support order. This hearing could change your rights or your children's rights to support.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the local child support agency or Attorney General to provide the notice required pursuant to subparagraph (A) of paragraph (1) shall not affect the validity of any order.

(4) (A) The notice required pursuant to subparagraph (A) of paragraph (1) shall be provided not later than seven calendar days prior to the hearing, or, if the local child support agency or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the local child support agency or Attorney General of the notice of the hearing.

(B) Service of the notice and the pleadings required pursuant to subparagraph (B) of paragraph (1) shall be completed not later than five days after receipt of the pleadings served on the local child support agency by the parent.

(5) The local child support agency or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the local child support agency or Attorney General has current addresses for all parties to the child support action.

(g) The local child support agency or Attorney General shall give notice to recipients of services under Section 17400 of every order obtained by the local child support agency or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within the time specified by federal law after the order has been filed. The local child support agency or Attorney General shall also give notice to these recipients of every order obtained in any other jurisdiction, that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, and which is received by the local child support agency or Attorney General, by sending a copy of the order to the recipient within the timeframe specified by federal law after the local child support agency or Attorney General has received a copy of the order. In any action enforced under Chapter 6 (commencing with Section 4900) of Part 5 of Division 9, the notice shall be made in compliance with the requirements of that chapter. The failure of the local child support agency or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The local child support agency or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the local child support agency or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 17400 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 17400 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The local child support agency or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in the action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf. Any stipulation approved by the court in violation of this subdivision shall be void.

(k) The local child support agency or Attorney General shall not enter into a stipulation that reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 17400 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 17400 on his or her own behalf or on behalf of the child.

(*l*) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 17400 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under Chapter 6 (commencing with Section 4900) of Part 5 of Division 9, unless otherwise specified, notice shall be provided by mailing the item by first-class mail to the initiating court.

(m) Notwithstanding any other provision of this section, the notices provided for pursuant to subdivisions (c) to (g), inclusive, shall not be required in foster care cases.

SEC. 85. Section 17430 of the Family Code is amended to read:

17430. (a) Notwithstanding any other provision of law, in any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, a judgment shall be entered without hearing, without the presentation of any other evidence or further notice to the defendant, upon the filing of proof of service by the local child support agency evidencing that more than 30 days have passed since the simplified summons and complaint, proposed judgment, blank answer, blank income and expense declaration, and all notices required by this division were served on the defendant.

(b) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (c) of Section 17400, or at any time before the default judgment is entered, the proposed judgment filed with the original summons and complaint shall be conformed by the court as the final judgment and a copy provided to the local child support agency, unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(c) If the local child support agency receives additional financial information within 30 days of service of the complaint and proposed judgment on the defendant and the additional information would result in a support order that is different from the amount in the proposed judgment, the local child support agency shall file a declaration setting forth the additional information and an amended proposed judgment. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall provide a conformed copy of the judgment to the local child support agency. The local child support agency shall mail by first-class mail, postage prepaid, a notice of entry of judgment by default and a copy of the judgment to the defendant to the address where he or she was served with the summons and complaint and last known address if different from that address.

SEC. 85.3. Section 17433 of the Family Code is amended to read:

17433. In any action in which a judgment or order for support was entered after the entry of the default of the defendant under Section 17430, the court shall relieve the defendant from that judgment or order if the defendant establishes that he or she was mistakenly identified in the order or in any subsequent documents or proceedings as the person having an obligation to provide support. The defendant shall also be entitled to the remedies specified in subdivisions (d) and (e) of Section 17530 with respect to any actions taken to enforce that judgment or

order. This section is only intended to apply where an order has been entered against a person who is not the support obligor named in the judgment or order.

SEC. 86. Section 17434 of the Family Code is amended to read:

17434. (a) The department shall publish a booklet describing the proper procedures and processes for the collection and payment of child and spousal support. The booklet shall be written in language understandable to the lay person and shall direct the reader to obtain the assistance of the local child support agency, the family law facilitator, or legal counsel where appropriate. The department may contract on a competitive basis with an organization or individual to write the booklet.

(b) The department shall have primary responsibility for the design and development of the contents of the booklet. The department shall solicit comment regarding the content of the booklet from the Director of the Administrative Office of the Courts. The department shall verify the appropriateness and accuracy of the contents of the booklet with at least one representative of each of the following organizations:

(1) A local child support agency.

(2) The State Attorney General's office.

(3) The California Family Support Council.

(4) A community organization that advocates for the rights of custodial parents.

(5) A community organization that advocates for the rights of supporting parents.

(c) Upon receipt of booklets on support collection, each county welfare department shall provide a copy to each head of household whose application for public assistance under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code has been approved and for whom support rights have been assigned pursuant to Section 11477 of the Welfare and Institutions Code. The department shall provide copies of the booklet to local child support agencies for distribution, and to any person upon request. The department shall also distribute the booklets to all superior courts. Upon receipt of those booklets, each clerk of the court shall provide two copies of the booklet to the petitioner or plaintiff in any action involving the support of a minor child. The moving party shall serve a copy of the booklet on the responding party.

(d) The department shall expand the information provided under its toll-free information hotline in response to inquiries regarding the process and procedures for collection and payment of child and spousal support. This toll-free number shall be advertised as providing information on child and spousal support. The hotline personnel shall not provide legal consultation or advice, but shall provide only referral services.

(e) The department shall maintain a file of referral sources to provide callers to the telephone hotline with the following information specific to the county in which the caller resides:

(1) The location and telephone number of the local child support agency, the county welfare office, the family law facilitator, and any other government agency that handles child and spousal support matters.

(2) The telephone number of the local bar association for referral to attorneys in family law practice.

(3) The name and telephone number of at least one organization that advocates the payment of child and spousal support or the name and telephone number of at least one organization that advocates the rights of supporting parents, if these organizations exist in the county.

SEC. 86.3. Section 17504 of the Family Code is amended to read:

17504. The first fifty dollars ($50) of any amount of child support collected in a month in payment of the required support obligation for that month shall be paid to a recipient of aid under this Article 2 (commencing with Section 11250) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, except recipients of foster care payments under Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be considered income or resources of the recipient family, and shall not be deducted from the amount of aid to which the family would otherwise be eligible. The local child support agency in each county shall ensure that payments are made to recipients as required by this section.

SEC. 87. Section 17505 of the Family Code is amended to read:

17505. (a) All state, county, and local agencies shall cooperate with the local child support agency (1) in the enforcement of any child support obligation or to the extent required under the state plan under Chapter 6 (commencing with Section 4900) of Part 5 of Division 9, Section 270 of the Penal Code, and Section 17604, and (2) the enforcement of spousal support orders and in the location of parents or putative parents. The local child support agency may enter into an agreement with and shall secure from a municipal, county, or state law enforcement agency, pursuant to that agreement, state summary criminal record information through the California Law Enforcement Telecommunications System. This subdivision applies irrespective of whether the children are or are not receiving aid to families with dependent children. All state, county, and local agencies shall cooperate with the district attorney in implementing Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 concerning the location, seizure, and recovery of abducted, concealed, or detained minor children.

(b) On request, all state, county, and local agencies shall supply the local child support agency of any county in this state or the California Parent Locator Service with all information on hand relative to the

location, income, or property of any parents, putative parents, spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

(c) The California Child Support Automation System, or its replacement, shall be entitled to the same cooperation and information provided to the California Parent Locator Service, to the extent allowed by law. The California Child Support Automation System, or its replacement, shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(d) Information exchanged between the California Parent Locator Service or the California Child Support Automation System, or its replacement, and state, county, or local agencies as specified in Section 666(c)(1)(D) of Title 42 of the United State Code shall be through automated processes to the maximum extent feasible.

SEC. 88. Section 17508 of the Family Code is amended to read:

17508. (a) The Employment Development Department shall, when requested by the Department of Child Support Services local child support agency, or, the Franchise Tax Board for purposes of administering Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the federal Parent Locator Service, or the California Parent Locator Service, provide access to information collected pursuant to Division 1 (commencing with Section 100 of the Unemployment Insurance Code to the requesting department or agency for purposes of administering the child support enforcement program, and for purposes of verifying employment of applicants and recipients of aid under this chapter or food stamps under Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

(b) (1) To the extent possible, the Employment Development Department shall share information collected under Sections 1088.5 and 1088.8 of the Unemployment Insurance Code immediately upon receipt. This sharing of information may include electronic means.

(2) This subdivision shall not authorize the Employment Development Department to share confidential information with any individuals not otherwise permitted by law to receive the information or preclude batch runs or comparisons of data.

SEC. 89. Section 17518 of the Family Code is amended to read:

17518. (a) As authorized by subdivision (d) of Section 704.120 of the Code of Civil Procedure, the following actions shall be taken in order to enforce support obligations that are not being met. Whenever a support judgment or order has been rendered by a court of this state

against an individual who is entitled to any unemployment compensation benefits or unemployment compensation disability benefits, the local child support agency may file a certification of support judgment or support order with the Department of Child Support Services, verifying under penalty of perjury that there is or has been a judgment or an order for support with sums overdue thereunder. The department shall periodically present and keep current, by deletions and additions, a list of the certified support judgments and orders and shall periodically notify the Employment Development Department of individuals certified as owing support obligations.

(b) If the Employment Development Department determines that an individual who owes support may have a claim for unemployment compensation disability insurance benefits under a voluntary plan approved by the Employment Development Department in accordance with Chapter 6 (commencing with Section 3251) of Part 2 of Division 1 of the Unemployment Insurance Code, the Employment Development Department shall immediately notify the voluntary plan payer. When the department notifies the Employment Development Department of changes in an individual's support obligations, the Employment Development Department shall promptly notify the voluntary plan payer of these changes. The Employment Development Department shall maintain and keep current a record of individuals who owe support obligations who may have claims for unemployment compensation or unemployment compensation disability benefits.

(c) Notwithstanding any other law, the Employment Development Department shall withhold the amounts specified below from the unemployment compensation benefits or unemployment compensation disability benefits of individuals with unmet support obligations. The Employment Development Department shall forward the amounts to the Department of Child Support Services for distribution to the appropriate certifying county.

(d) Notwithstanding any other law, during the payment of unemployment compensation disability benefits to an individual, with respect to whom the Employment Development Department has notified a voluntary plan payer that the individual has a support obligation, the voluntary plan payer shall withhold the amounts specified below from the individual's unemployment compensation disability benefits and shall forward the amounts to the appropriate certifying county.

(e) The amounts withheld in subdivisions (c) and (d) shall be equal to 25 percent of each weekly unemployment compensation benefit payment or periodic unemployment compensation disability benefit payment, rounded down to the nearest whole dollar, which is due the individual identified on the certified list. However, the amount withheld may be reduced to a lower whole dollar amount through a written

agreement between the individual and the local child support agency or through an order of the court.

(f) The department shall ensure that the appropriate certifying county shall resolve any claims for refunds in the amounts overwithheld by the Employment Development Department or voluntary plan payer.

(g) No later than the time of the first withholding, the individuals who are subject to the withholding shall be notified by the payer of benefits of all of the following:

(1) That his or her unemployment compensation benefits or unemployment compensation disability benefits have been reduced by a court-ordered support judgment or order pursuant to this section.

(2) The address and telephone number of the local child support agency that submitted the certificate of support judgment or order.

(3) That the support order remains in effect even though he or she is unemployed or disabled unless it is modified by court order, and that if the amount withheld is less than the monthly support obligation, an arrearage will accrue.

(h) The individual may ask the appropriate court for an equitable division of the individual's unemployment compensation or unemployment compensation disability amounts withheld to take into account the needs of all the persons the individual is required to support.

(i) The Department of Child Support Services and the Employment Development Department shall enter into any agreements necessary to carry out this section.

(j) For purposes of this section, ''support obligations'' means the child and related spousal support obligations that are being enforced pursuant to a plan described in Section 454 of the Social Security Act and as that section may hereafter be amended. However, to the extent ''related spousal support obligation'' may not be collected from unemployment compensation under federal law, those obligations shall not be included in the definition of support obligations under this section.

SEC. 90. Section 17525 of the Family Code is amended to read:

17525. (a) Whenever a state or local governmental agency issues a notice of support delinquency, the notice shall state the date upon which the amount of the delinquency was calculated, and shall notify the obligor that the amount calculated may, or may not, include accrued interest. This requirement shall not be imposed until the local child support agency has instituted the California Child Support Automation System defined in Section 10081. The notice shall further notify the obligor of his or her right to an administrative determination of arrears by requesting that the local child support agency review the arrears, but that payments on arrears continue to be due and payable unless and until the local child support agency notifies the obligor otherwise. A state

agency shall not be required to suspend enforcement of any arrearages as a result of the obligor's request for an administrative determination of arrears, unless the agency receives notification of a suspension pursuant to subdivision (b) of Section 17526.

(b) For purposes of this section, ''notice of support delinquency'' means a notice issued to a support obligor that includes a specific statement of the amount of delinquent support due and payable.

(c) This section shall not require a state or local entity to calculate the amount of a support delinquency, except as otherwise required by law.

SEC. 91. Section 17531 is added to the Family Code, to read:

17531. When a local child support agency closes a child support case containing summary criminal history information, the local child support agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than offenses related to the parent's having failed to provide support for minor children, no later than four years and four months, or any other timeframe that is consistent with federal regulations controlling child support records retention, after the date the local child support agency closes the case.

SEC. 92. Section 17540 is added to the Family Code, to read:

17540. (a) (1) Commencing July 1, 2000, the department shall pay only those county claims for federal or state reimbursement under this division which are filed with the department within nine months of the end of the calendar quarter in which the costs are paid. A claim filed after that time may only be paid if the claim falls within the exceptions set forth in federal law.

(2) The department may change the nine-month limitation specified in paragraph (1), as deemed necessary by the department to comply with federal changes which affect time limits for filing a claim.

(b) (1) The department may waive the time limit imposed by subdivision (a) if the department determines there was good cause for a county's failure to file a claim or claims within the time limit.

(2) (A) For purposes of this subdivision, ''good cause'' means circumstances which are beyond the county's control, including acts of God and documented action or inaction by the state or federal government.

(B) ''Circumstances beyond the county's control'' do not include neglect or failure on the part of the county or any of its offices, officers, or employees.

(C) A county shall request a waiver of the time limit imposed by this section for good cause in accordance with regulations adopted and promulgated by the department.

(3) The department's authority to waive the time limit under this subdivision shall be subject to the availability of funds and shall not apply to claims submitted more than 18 months after the end of the calendar quarter in which costs were paid.

SEC. 93. Section 17604 of the Family Code is amended to read:

17604. (a) (1) If at any time the director considers any public agency, that is required by law, by delegation of the department, or by cooperative agreement to perform functions relating to the state plan for securing child and spousal support and determining paternity, to be failing in a substantial manner to comply with any provision of the state plan, the director shall put that agency on written notice to that effect.

(2) The state plan concerning spousal support shall apply only to spousal support included in a child support order.

(3) In this chapter the term spousal support shall include support for a former spouse.

(b) After receiving notice, the public agency shall have 45 days to make a showing to the director of full compliance or set forth a compliance plan that the director finds to be satisfactory.

(c) If the director determines that there is a failure on the part of that public agency to comply with the provisions of the state plan, or to set forth a compliance plan that the director finds to be satisfactory, or if the State Personnel Board certifies to the director that the public agency is not in conformity with applicable merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that sanctions are necessary to secure compliance, the director shall withhold part or all of state and federal funds, including incentive funds, from that public agency until the public agency shall make a showing to the director of full compliance.

(d) After sanctions have been invoked pursuant to subdivision (c), if the director determines that there remains a failure on the part of the public agency to comply with the provisions of the state plan, the director may remove that public agency from performing any part or all of the functions relating to the state plan.

(e) In the event of any other audit or review that results in the reduction or modification of federal funding for the program under Part D (commencing with Section 652) of Subchapter IV of Title 42 of the United States Code, the sanction shall be assessed against those counties specifically cited in the federal findings in the amount cited in those findings.

(f) The department shall establish a process whereby any county assessed a portion of any sanction may appeal the department's decision.

(g) Nothing in this section shall be construed as relieving the board of supervisors of the responsibility to provide funds necessary for the continued operation of the state plan as required by law.

SEC. 94. Section 17714 of the Family Code is amended to read:

17714. (a) (1) Any funds paid to a county pursuant to this chapter prior to June 30, 1999, which exceed the county's cost of administering the child support program of the local child support agency pursuant to Section 17400 to that date, hereafter referred to as "excess funds," shall be expended by the county only upon that program. All these excess funds shall be deposited by the county into a special fund established by the county for this purpose.

(2) Performance incentive funds shall include, but not be limited to, incentive funds paid pursuant to Section 17704, and performance incentive funds paid pursuant to Section 14142.93 of the Welfare and Institutions Code and all interest earned on deposits in the special fund. Performance incentive funds shall not include funds paid pursuant to Section 17706. Performance incentive funds shall be expended by the county only upon that program. All performance incentive funds shall be deposited by the county into a special fund established by the county for this purpose.

(b) All excess funds and performance incentive funds shall be expended by the county on the support enforcement program of the local child support agency within two fiscal years following the fiscal year of receipt of the funds by the county. Except as provided in subdivision (c), any excess funds or performance incentive funds paid pursuant to this chapter since July 1, 1992, that the department determines have not been spent within the required two-year period shall revert to the state General Fund, and shall be distributed by the department only to counties that have complied with this section. The formula for distribution shall be based on the number of CalWORKs cases within each county.

(c) A county that submits to the department a written plan approved by that county's local child support agency for the expenditure of excess funds or performance incentive funds shall be exempted from the requirements of subdivision (b), if the department determines that the expenditure will be cost-effective, will maximize federal funds, and the expenditure plan will require more than the time provided for in subdivision (b) to expend the funds. Once the department approves a plan pursuant to this subdivision, funds received by a county and designated for an expenditure in the plan shall not be expended by the county for any other purpose.

(d) Nothing in this section shall be construed to nullify the recovery and reversion to the General Fund of unspent incentive funds as provided in Section 6 of Chapter 479 of the Statutes of 1999.

SEC. 95. Section 6103.9 of the Government Code is amended to read:

6103.9. (a) Notwithstanding any other provision of law, except as provided in this section, the local child support agency and the district

attorney shall be exempt from the payment of any fees, including fees for service of process and filing fees, in any action or proceeding brought for the establishment of a child support obligation or the enforcement of a child or spousal support obligation.

(b) A court or county may be reimbursed for those direct costs related to the establishment of a child support obligation or the enforcement of a child or spousal support obligation which have been agreed to pursuant to a plan of cooperation. Any reimbursement pursuant to a plan of cooperation shall not include any amount which is payable as a filing fee.

(c) For purposes of this section, a ''plan of cooperation'' includes an agreement entered into by a court and the Administrative Office of the Courts of the California Judicial Council which provides for reimbursement for the cost of providing clerical and administrative support furnished by the court.

SEC. 96. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to any such owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex

parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution. Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

Where a court has made an order to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (1) disclosing information in response to an order pursuant to this subdivision, or (2) complying with an order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the order.

SEC. 97. 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.

(ag) Director of Child Support Services.

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. 97.1. 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) Director of Industrial Relations.
(ag) The Inspector General pursuant to Section 6125 of the Penal Code.
(ah) Director of Child Support Services.

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. 98. Section 12419.3 of the Government Code is amended to read:

12419.3. The Controller shall offset delinquent accounts against personal income tax refunds which have been certified by the Franchise Tax Board, in the following priority:

(a) The nonpayment of child or family support accounts enforced by a local child support agency.

(b) The nonpayment of child or family support accounts enforced by someone other than a local child support agency.

(c) The nonpayment of spousal support accounts enforced by a local child support agency.

(d) The nonpayment of spousal support accounts enforced by someone other than a local child support agency.

(e) The benefit overpayment accounts administered by the Employment Development Department if no signed reimbursement agreement exists, or if two consecutive payments on a reimbursement agreement are delinquent as of September 30 of the taxable year.

(f) The other offset accounts in the priority determined by the Controller.

SEC. 98.1. Section 12419.3 of the Government Code is amended to read:

12419.3. The Controller shall offset delinquent accounts against personal income tax refunds which have been certified by the Franchise Tax Board, in the following priority:

(a) The nonpayment of child or family support accounts enforced by a local child support agency.

(b) The nonpayment of child or family support accounts enforced by someone other than a local child support agency.

(c) The nonpayment of spousal support accounts enforced by a local child support agency.

(d) The nonpayment of spousal support accounts enforced by someone other than a local child support agency.

(e) The benefit overpayment accounts administered by the Employment Development Department if no signed reimbursement agreement exists, or if two consecutive payments on a reimbursement agreement are delinquent at any time.

(f) The other offset accounts in the priority determined by the Controller.

SEC. 99. Section 15703 of the Government Code is amended to read:

15703. Notwithstanding any other provision of law, the Franchise Tax Board shall, upon the request of the local child support agency, provide to that agency the address, in addition to the social security number, of an absent parent against whose personal income tax refund the agency has requested an offset for nonpayment of child support, if that information is required for the enforcement of a child support order.

SEC. 100. Section 26746 of the Government Code is amended to read:

26746. In addition to any other fees required by law, a processing fee of five dollars ($5) shall be assessed for each disbursement of money collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. The fee shall be collected from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ. All proceeds of this fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the depositor.

Seventy percent of the moneys in the special fund shall be expended to supplement the county's cost for vehicle fleet replacement and equipment for the sheriff and the marshal. Thirty percent of the moneys

in the special fund shall be expended to supplement the county's cost of vehicle and equipment maintenance for the sheriff and the marshal, and for the county's expenses in administering the funds.

No fee shall be charged where the only disbursement is the return of the judgment creditor's deposit for costs.

SEC. 100.1. Section 26746 of the Government Code is amended to read:

26746. In addition to any other fees required by law, a processing fee of eight dollars ($8) shall be assessed for each disbursement of money collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. The fee shall be collected from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ. All proceeds of this fee shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the depositor.

Seventy percent of the moneys in the special fund shall be expended to supplement the county's cost for vehicle fleet replacement and equipment for the sheriff and the marshal. Thirty percent of the moneys in the special fund shall be expended to supplement the county's cost of vehicle and equipment maintenance for the sheriff and the marshal, and for the county's expenses in administering the funds.

No fee shall be charged where the only disbursement is the return of the judgment creditor's deposit for costs.

SEC. 101. Section 27757 of the Government Code is amended to read:

27757. (a) Except as otherwise ordered by the juvenile court, a county financial evaluation officer, upon satisfactory proof, may reduce, cancel, or remit the costs and charges listed in Sections 903, 903.1, 903.2, 903.3, and 903.45 of the Welfare and Institutions Code, or established by order of the juvenile court.

(b) The county financial evaluation officer may, following entry of an order by the juvenile court that a minor person be represented by the public defender or private attorney or be placed under the probation supervision of the probation officer or be placed or detained in, or committed to, a county institution or other place, make an investigation to determine the moneys, the property, or interest in property, if any, the minor person has, and whether he or she has a duly appointed and acting guardian to protect his or her property interests. The county financial evaluation officer may also make an investigation to determine whether the minor person has any relative or relatives responsible under the provisions of this chapter, and may ascertain the financial condition of

that relative or those relatives to determine whether they are financially able to pay such charges.

(c) In any case where a county has expended money for the support and maintenance of any ward, dependent child or other minor person, or has furnished support and maintenance, and the court has not made an order of reimbursement to the county, in whole or in part, as provided by law, or the court has made and subsequently revoked such an order, if the ward, dependent child or other minor person or parent, guardian, or other person liable for the support of the ward, dependent child or other minor person acquires property, money, or estate subsequent to the date the juvenile court assumed jurisdiction over the ward, dependent child or minor person, or subsequent to the date the order of reimbursement was revoked, the county shall have a claim for said reimbursement against the ward, dependent child or other minor person or parent, guardian or other person responsible for such support and maintenance. Such claim shall be enforced by the county financial evaluation officer or the local child support agency, as the case may be.

SEC. 102. Section 29410 of the Government Code is amended to read:

29410. The board of supervisors of a county may establish a local child support agency's family or child support trust fund pursuant to this article.

SEC. 102.5. Section 29411 of the Government Code is amended to read:

29411. In any county that establishes a local child support agency family or child support trust fund pursuant to this article, the board of supervisors shall make these amounts available annually to the local child support agency as determined to be necessary by the auditor-controller. The auditor-controller shall cause those amounts to be transferred to the local child support agency family or child support trust fund.

SEC. 103. Section 29412 of the Government Code is amended to read:

29412. The local child support agency shall use the trust fund solely for the purpose of advancing reimbursement for moneys erroneously attached or intercepted by a government agency for payment of a delinquent support obligation.

SEC. 104. Section 29413 of the Government Code is amended to read:

29413. Upon the presentation by the local child support agency of a requisition to the auditor, the auditor shall draw a warrant in favor of the local child support agency on the trust fund for such amounts as the local child support agency requires, within seven working days of the

presentation of the requisition to the auditor. The treasurer shall pay the warrant.

SEC. 105. Section 29414 of the Government Code is amended to read:

29414. (a) The local child support agency shall forward attached or intercepted moneys upon which advances were made to the trust fund within three days of receipt from the attaching or intercepting agency.

(b) The local child support agency shall not designate the application of money returned to the trust fund to a specific case.

SEC. 106. Section 29415 of the Government Code is amended to read:

29415. The local child support agency trust fund is in addition to any other appropriations for the local child support agency, and this article shall not be construed to limit or affect any provision of law relative to the expenses of the local child support agency which are incurred and paid as other county claims after allowance by the board of supervisors.

SEC. 107. Section 29416 of the Government Code is amended to read:

29416. Notwithstanding any other provision of law, the budget of each county shall indicate the amount appropriated for the local child support agency for child and spousal support enforcement. All such moneys shall be available for expenditure for capital and operational expenses.

SEC. 108. Section 102447 of the Health and Safety Code is amended to read:

102447. Notwithstanding Section 102430, a parent's social security number contained in the confidential medical and social information portion of the child's certificate of live birth shall be accessible to the State Department of Child Support Services and local child support agencies for the purposes of operating the Child Support Enforcement Program, as specified in Title IV-D of the federal Social Security Act.

SEC. 109. Section 10121.6 of the Insurance Code is amended to read:

10121.6. (a) No policy of group disability insurance or self-insured employee welfare benefit plan which provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall exclude a dependent child from eligibility or benefits solely because the dependent child does not reside with the employee, insured, or policyholder.

(b) Each policy of group disability insurance or self-insured employee welfare benefit plan which provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall enroll, upon application by the employer or group administrator, a dependent child of the noncustodial parent when that

parent is the employee, insured, or policyholder at any time either the parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, or the local child support agency makes an application for enrollment to the employer or group administrator when a court order for medical support exists. In the case of children who are eligible for medicaid, the State Department of Health Services may also make that application.

SEC. 110. Section 138.5 of the Labor Code is amended to read:

138.5. The Division of Workers' Compensation shall cooperate in the enforcement of child support obligations. At the request of the Department of Child Support Services, the administrative director shall assist in providing to the State Department of Child Support Services information concerning persons who are receiving permanent disability benefits or who have filed an application for adjudication of a claim which the Department of Child Support Services determines is necessary to carry out its responsibilities pursuant to Section 17510 of the Family Code.

The process of sharing information with regard to applicants for and recipients of permanent disability benefits required by this section shall be known as the Workers' Compensation Notification Project.

SEC. 110.3. Section 830.35 of the Penal Code is amended to read:

830.35. 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) A welfare fraud investigator or inspector, regularly employed and paid in that capacity by a county, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code.

(b) A child support investigator or inspector, regularly employed and paid in that capacity by a district attorney's office, if the primary duty of the peace officer is the enforcement of the provisions of the Family Code and Section 270.

(c) The coroner and deputy coroners, regularly employed and paid in that capacity, of a county, if the primary duty of the peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

SEC. 111. Section 11105 of the Penal Code is amended to read:

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

(2) As used in this section:

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

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

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

(1) The courts of the state.

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

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of

supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

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

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

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

(3) To a peace officer of another country.

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

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

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

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

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

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

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

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

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or

prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a ''compelling need'' as required to be shown in this subdivision.

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

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

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

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

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm

agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

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

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

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

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

SEC. 111.1. Section 11105 of the Penal Code is amended to read:

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

(2) As used in this section:

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

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

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

(1) The courts of the state.

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

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(17) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

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

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

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

(3) To a peace officer of another country.

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

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

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

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

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

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

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

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

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

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

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the

United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

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

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

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

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

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the

information in the public record is authorized by a court, statute, or decisional law.

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

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

SEC. 111.3. Section 13300 of the Penal Code is amended to read:

13300. (a) As used in this section:

(1) ''Local summary criminal history information'' means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) ''Local summary criminal history information'' does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) ''Local agency'' means a local criminal justice agency.

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

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (d) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, and subdivisions (a), (b), and (c) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(10) Any city, county, city and county, or district, or any officer or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(14) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parents having failed to provide support for the minor children, consistent with Section 17531 of the Family Code.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties,

Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, which operates a nuclear energy facility when access is needed to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall furnish a copy of this information to the person to whom the information relates.

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

(3) To a peace officer of another country.

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

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

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

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

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

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

If the local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the information relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary

criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

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

Seeking entrance to private residences in the course of employment shall be deemed a ''compelling need'' as required to be shown in this subdivision.

(10) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code, for the purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a ''compelling need'' as required by this subdivision. However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or

certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped ''no criminal record'' and returned to the person or entity making the request.

(e) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee not to exceed ten dollars ($10) to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

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

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

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

(k) Any local criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, and for which the person did not complete a postarrest diversion program or a deferred entry of judgment program, to a government agency employer of that peace officer or applicant.

(*l*) Any local criminal justice agency may release information concerning an arrest of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in

conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant.

(m) Notwithstanding subdivision (k) or (*l*), a local criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion or a deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

SEC. 111.5. Section 13300 of the Penal Code is amended to read:

13300. (a) As used in this section:

(1) ''Local summary criminal history information'' means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) ''Local summary criminal history information'' does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) ''Local agency'' means a local criminal justice agency.

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

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (d) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, and subdivisions (a), (b), and (c) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(10) Any city, county, city and county, or district, or any officer or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(14) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parents having failed to provide support for the minor children, consistent with Section 17531 of the Family Code.

(15) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, which operates a nuclear energy facility when access is needed to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall furnish a copy of this information to the person to whom the information relates.

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

(3) To a peace officer of another country.

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

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

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

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

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

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

If the local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the information relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

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

Seeking entrance to private residences in the course of employment shall be deemed a ''compelling need'' as required to be shown in this subdivision.

(10) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code, for the purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a ''compelling need'' as required by this subdivision. However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than

30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

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

(e) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee not to exceed ten dollars ($10) to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

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

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

(j) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of

fingerprints for the purpose of conducting summary criminal history information record checks which are authorized by law.

(k) Any local criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, and for which the person did not complete a postarrest diversion program or a deferred entry of judgment program, to a government agency employer of that peace officer or applicant.

(*l*) Any local criminal justice agency may release information concerning an arrest of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant.

(m) Notwithstanding subdivision (k) or (*l*), a local criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion or a deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

SEC. 112. Section 19271.6 of the Revenue and Taxation Code, as amended and renumbered by Chapter 322 of the Statutes of 1998, is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the Department of Child Support 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 Department of Child Support Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data processing agents, shall receive from the Franchise Tax Board the entire list of past-due support obligors, which the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To

the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the entire list of past-due support obligors.

(b) The Financial Institution Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child support delinquency, as set forth in Section 19271, shall be a violation of Section 19542.

(c) Each county shall compile a file of support obligors with judgments and orders that are being enforced by local child support agencies pursuant to Section 17400 of the Family 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 Department of Child Support Services and the Franchise Tax Board.

(d) To effectuate the Financial Institution Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the Franchise Tax Board on a quarterly basis the name, record address and other addresses, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the institution and who owes past-due support, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number.

(2) In response to a notice or order to withhold issued by the Franchise Tax Board, withhold from any accounts of the obligor the amount of any past-due support stated on the notice or order and transmit the amount to the Franchise Tax Board in accordance with Section 18670 or 18670.5.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number, or other taxpayer identification number or other identifying information of that person has been received from or furnished to the Franchise Tax Board.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person was included in the data exchange with the Franchise Tax Board required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the Franchise Tax Board as a result of the data exchange. This paragraph shall not preclude any liability that may result if the financial institution does not comply with subdivision (b) of Section 18674.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) Information required to be submitted to the Franchise Tax Board pursuant to this section shall only be used by the Franchise Tax Board to collect past-due support pursuant to Section 19271. If the Franchise Tax Board has issued an earnings withholding order and the condition described in subparagraph (C) of paragraph (1) of subdivision (i) exists with respect to the obligor, the Franchise Tax Board shall not use the information it receives under this section to collect the past-due support from that obligor. The Franchise Tax Board shall forward to the counties, in accordance with guidelines prescribed by the Department of Child Support 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 17212 of the Family Code.

(h) For those noncustodial parents owing past-due support for which there is a match under paragraph (1) of subdivision (d), the past-due support at the time of the match shall be a delinquency under this article for the purposes of the Franchise Tax Board taking any collection action pursuant to Section 18670 or 18670.5.

(i) (1) Each county shall notify the Franchise Tax Board upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) All of the following apply:

(i) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation.

(ii) The obligor is in compliance with that order.

(B) An earnings assignment order or a notice of assignment that includes an amount for past-due support has been served on the obligated parent's employer and earnings are being withheld pursuant to the earnings assignment order or a notice of assignment.

(C) At least 50 percent of the obligated parent's earnings are being withheld for support.

(D) The obligor is less than 90 days delinquent in the payment of any amount of support. For purposes of this subparagraph, any delinquency existing at the time a case is received by a local child support agency 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 Department of Child Support 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 Child Support 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. 112.5. Section 19271.6 of the Revenue and Taxation Code, as amended by Chapter 980 of the Statutes of 1999, is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the Department of Child Support 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 Department of Child Support 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 local child support agencies pursuant to Section 17400 of the Family 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 Department of Child Support Services and the Franchise Tax Board.

(2) The Department of Child Support Services, 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 Department of Child Support Services 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 Department of Child Support 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 17212 of the Family 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 local child support agency 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 Department of Child Support 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 Child Support 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. 113. 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 Department of Child Support 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. 114. Section 19274 of the Revenue and Taxation Code is amended to read:

19274. The local child support agency may refer to the Franchise Tax Board cases in which the social security number of the noncustodial parent is unknown. The Franchise Tax Board shall search its records to obtain the noncustodial parent's social security number and furnish this

information to the local child support agency to assist in the establishment or enforcement of a child support order. For purposes of administering this section, the Franchise Tax Board may use any services or information available for tax enforcement purposes, or available to a local child support agency or the Title IV-D agency in collecting or enforcing child support, or in locating absent or noncustodial parents.

SEC. 114.3. Section 19275 of the Revenue and Taxation Code is amended to read:

19275. For purposes of Parts 10 (commencing with Section 17001), 10.5 (commencing with Section 20501), and 11 (commencing with Section 23001), any reference to the district attorney or counties, the State Department of Social Services, or the Statewide Automated Child Support System, as it relates to the collection, enforcement, or accounts receivable management of child support under the Family Code or the Welfare and Institutions Code shall mean the local child support agency, as defined in Section 17000 of the Family Code, the Department of Child Support Services, and the California Child Support Automation System, respectively, in keeping with the changes and transition of authority and responsibilities as required under the Family Code and the Welfare and Institutions Code.

SEC. 115. Section 1088.8 of the Unemployment Insurance Code is amended to read:

1088.8. (a) Effective January 1, 2001, any service-recipient, as defined in subdivision (b), who makes or is required to make a return to the Internal Revenue Service, in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code (relating to payments made to a service-provider as compensation for services) shall file with the department information as required under subdivision (c).

(b) For purposes of this section:

(1) ''Service-recipient'' means any individual, person, corporation, association, or partnership, or agent thereof, doing business in this state, deriving trade or business income from sources within this state, or in any manner in the course of a trade or business subject to the laws of this state. ''Service-recipient'' also includes the State of California or any political subdivision thereof, including the Regents of the University of California, any charter city, or any political body not a subdivision or agency of the state, and any person, employee, department, or agent thereof.

(2) ''Service-provider'' means an individual who is not an employee of the service-recipient for California purposes and who received compensation or executes a contract for services performed for that service-recipient within or without the state.

(c) Each service-recipient shall report all of the following information to the department, within 20 days of the earlier of first making payments that in the aggregate equal or exceed six hundred dollars ($600) in any year to a service-provider, or entering into a contract or contracts with a service-provider providing for payments that in the aggregate equal or exceed six hundred dollars ($600) in any year:

(1) The full name, address, and social security number of the service-provider.

(2) The service-recipient's name, business name, address, and telephone number.

(3) The service-recipient's federal employer identification number, California state employer account number, social security number, or other identifying number as required by the Employment Development Department in consultation with the Franchise Tax Board.

(4) The date the contract is executed, or if no contract, the date payments in the aggregate first equal or exceed six hundred dollars ($600).

(5) The total dollar amount of the contract, if any, and the contract expiration date.

(d) The department shall retain information collected pursuant to this section until November 1 following the tax year in which the contract is executed, or if no contract, the tax year in which the aggregate payments first equal or exceed six hundred dollars ($600).

(e) For each failure to fully comply with subdivision (c), unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the service recipient and service provider not to supply the required report or to supply a false or incomplete report.

(f) Information obtained by the department pursuant to this section may be released only for purposes of establishing, modifying, or enforcing child support obligations under Section 17400 of the Family Code and for child support collection purposes authorized under Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of the Revenue and Taxation Code, or to the Franchise Tax Board for tax enforcement purposes or for the administration of this code.

(g) This section shall become operative on January 1, 2001.

SEC. 116. Section 1255.7 of the Unemployment Insurance Code is amended to read:

1255.7. (a) The Department of Child Support Services shall notify the director whether an individual filing a claim for unemployment compensation after October 1, 1982, owes support obligations as defined under subdivision (h), and notify the department of any changes

in the status of these individuals to ensure that the department has a current record.

(b) The department shall maintain and keep current a record of individuals who owe support obligations and who may have claims for unemployment compensation benefits.

(c) The department shall deduct and withhold support obligations as defined under subdivision (h) from any unemployment compensation payable to an individual who owes these obligations.

(d) Any amount deducted and withheld under subdivision (c) shall be paid by the department to the appropriate county or to the Department of Child Support Services as the assigned payee, as stipulated by mutual agreement, in the interagency agreement between the department and the Department of Child Support Services.

(e) Any amount deducted and withheld under subdivision (c) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the Department of Child Support Services.

(f) For purposes of subdivisions (a) to (e), inclusive, ''unemployment compensation'' means any compensation payable under this division, except Part 2 (commencing with Section 2601), but including amounts payable by the department pursuant to an agreement under any federal unemployment compensation law.

(g) This section applies only if appropriate arrangements have been made for reimbursement by the Department of Child Support Services for the administrative costs incurred by the Employment Development Department.

(h) For purposes of this section, ''support obligations'' means the child and related spousal support obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act and as that section may hereafter be amended. However, to the extent ''related spousal support obligations'' may not be collected from unemployment compensation under federal law, those obligations shall not be included in the definition of support obligations under this section.

SEC. 117. Section 2630 of the Unemployment Insurance Code is amended to read:

2630. (a) The Department of Child Support Services shall periodically notify the department of individuals who are certified, as provided in Section 17518 of the Family Code, as having support obligations, as defined by subdivision (g) and notify the department of any changes in the status of these individuals to ensure that the department has a current record.

(b) Upon receipt of the notifications referred to in subdivision (a), the department shall determine whether the individuals have claims for

unemployment compensation disability benefits, either with the department or under an approved voluntary plan.

(c) If the department determines that an individual referred to in subdivision (a) has a claim for unemployment compensation disability benefits with an approved voluntary plan, it shall notify the voluntary plan payer. When the Department of Child Support Services notifies the department of any changes in the individual's status as to his or her support obligations, the department shall in turn notify the voluntary plan payer. Upon notification from the department, the voluntary plan payer shall deduct and withhold the amounts specified in Section 17518 of the Family Code from the unemployment compensation disability benefits that would otherwise be payable to the individual. For each withholding, the voluntary plan payer shall deduct an amount which represents the amount withheld for support obligations and may also deduct an administrative fee representing actual costs, not to exceed two dollars ($2). In no event shall the withholding and the administrative fee exceed 25 percent or a lesser amount as specified in subdivision (e) of Section 17518 of the Family Code. The voluntary plan payer shall pay the amounts for support deducted and withheld pursuant to this section to the appropriate certifying county.

(d) The department shall maintain a current record of individuals certified as owing support obligations. If the department determines that the individual has a claim for unemployment compensation disability benefits with the department, it shall deduct and withhold the amounts specified in Section 17518 of the Family Code from the unemployment compensation disability benefits that would otherwise be payable to the individual. The department shall periodically pay the amounts deducted and withheld to the appropriate county or to the Department of Child Support Services as the assigned payee, as stipulated by mutual agreement, in the interagency agreement between the department and the Department of Child Support Services.

(e) Amounts deducted and withheld from an individual's unemployment compensation disability benefits in accordance with subdivision (c) or (d) shall for all purposes be treated as if it were paid to the individual and then paid by the individual to the Department of Child Support Services or the appropriate certifying county.

(f) This section shall apply only if appropriate arrangements are made for the Department of Child Support Services to reimburse the department for its administrative costs for performing the functions required of it by this section.

(g) For purposes of this section, ''support obligations'' means the child and related spousal support obligations described in the state plan approved pursuant to Section 454 of the Social Security Act and as that section may hereafter be amended. However, to the extent ''related

spousal support obligations'' may not be collected from unemployment compensation under federal law, those obligations shall not be included in the definition of support obligations under this section.

SEC. 118. Section 903.4 of the Welfare and Institutions Code is amended to read:

903.4. (a) The Legislature finds that even though Section 903 establishes parental liability for the cost of the care, support, and maintenance of a child in a county institution or other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court, the collection of child support for juveniles who have been placed in out-of-home care as dependents or wards of the juvenile court under Sections 300, 601, and 602 has not been pursued routinely and effectively.

It is the purpose of this section to substantially increase income to the state and to counties through court-ordered parental reimbursement for the support of juveniles who are in out-of-home placement. In this regard, the Legislature finds that the costs of collection will be offset by the additional income derived from the increased effectiveness of the parental support program.

(b) In any case in which a child is or has been declared a dependent child or a ward of the court pursuant to a Section 300, 601, or 602, the juvenile court shall order any agency which has expended moneys or incurred costs on behalf of the child pursuant to a detention or placement order of the juvenile court, to submit to the local child support agency, within 30 days, in the form of a declaration, a statement of its costs and expenses for the benefit, support, and maintenance of the child.

(c) (1) The local child support agency may petition the superior court to issue an order to show cause why an order should not be entered for continuing support and reimbursement of the costs of the support of any minor described in Section 903.

Any order entered as a result of the order to show cause shall be enforceable in the same manner as any other support order entered by the courts of this state at the time it becomes due and payable.

In any case in which the local child support agency has received a declaration of costs or expenses from any agency, the declaration shall be deemed an application for assistance pursuant to Section 17400 of the Family Code.

(2) The order to show cause shall inform the parent of all of the following facts:

(A) He or she has been sued.

(B) If he or she wishes to seek the advice of an attorney in this matter, it should be done promptly so that his or her financial declaration and written response, if any, will be filed on time.

(C) He or she has a right to appear personally and present evidence in his or her behalf.

(D) His or her failure to appear at the order to show cause hearing, personally or through his or her attorney, may result in an order being entered against him or her for the relief requested in the petition.

(E) Any order entered could result in the garnishment of wages, taking of money or property to enforce the order, or being held in contempt of court.

(F) Any party has a right to request a modification of any order issued by the superior court in the event of a change in circumstances.

(3) Any existing support order shall remain in full force and effect unless the superior court modifies that order pursuant to subdivision (f).

(4) The local child support agency shall not be required to petition the court for an order for continuing support and reimbursement if, in the opinion of the local child support agency, it would not be appropriate to secure such an order. The local child support agency shall not be required to continue collection efforts for any order if, in the opinion of the local child support agency, it would not be appropriate or cost effective to enforce the order.

(d) (1) In any case in which an order to show cause has been issued and served upon a parent for continuing support and reimbursement of costs, a completed income and expense declaration shall be filed with the court by the parent; a copy of it shall be delivered to the local child support agency at least five days prior to the hearing on the order to show cause.

(2) Any person authorized by law to receive a parent's financial declaration or information obtained therefrom, who knowingly furnishes the declaration or information to a person not authorized by law to receive it, is guilty of a misdemeanor.

(e) If a parent has been personally served with the order to show cause and no appearance is made by the parent, or an attorney in his or her behalf, at the hearing on the order to show cause, the court may enter an order for the principal amount and continuing support in the amount demanded in the petition.

If the parent appears at the hearing on the order to show cause, the court may enter an order for the amount the court determines the parent is financially able to pay.

(f) The court shall have continuing jurisdiction to modify any order for continuing support entered pursuant to this section.

(g) As used in this section, ''parent'' includes any person specified in Section 903, the estate of any such person, and the estate of the minor person.

(h) The local child support agency may contract with another county agency for the performance of any of the duties required by this section.

SEC. 119. Section 903.41 of the Welfare and Institutions Code is amended to read:

903.41. (a) It is the intention of the Legislature that the family law departments and juvenile departments of each superior court coordinate determinations of parentage and the setting of support to ensure that the State of California remains in compliance with federal regulations for child support guidelines. The Legislature therefore enacts this section for the purpose of ensuring a document exchange between the family law departments and juvenile departments of each superior court as necessary to administer the public social services administered or supervised by the State Department of Social Services.

(b) If the issue of paternity is raised during any hearings pursuant to Section 300, 601, or 602, the court clerk shall notify the local child support agency for an inquiry concerning any superior court order or judgment which addresses the issue.

(1) If the local child support agency determines that a judgment for parentage already exists, the local child support agency shall obtain and forward certified copies of the judgment to the juvenile court and the court shall take judicial notice thereof.

(2) If the local child support agency determines that the issue of parentage has not been determined, the juvenile court may determine the issue of parentage and, if it does so, shall give notice to the local child support agency.

(c) If the court establishes paternity of a minor child, the court clerk shall forward the order on a form to be adopted by the Judicial Council to the local child support agency.

(d) If a child is receiving public assistance under the CalWORKs program, or if it appears to the court that the child may receive assistance under CalWORKs, the court shall direct the clerk of the court to advise the local child support agency.

(e) The court shall advise the parent of the minor of the possibility that the local child support agency may file an action for support if the child receives CalWORKs, pursuant to Section 17402 of the Family Code.

SEC. 120. Section 903.5 of the Welfare and Institutions Code is amended to read:

903.5. In addition to the requirements of Section 903.4, and notwithstanding any other provision of law, the parent or other person legally liable for the support of a minor, who voluntarily places the minor in 24-hour out-of-home care, shall be liable for the cost of the minor's care, support, and maintenance when the minor receives Aid to Families with Dependent Children-Foster Care (AFDC-FC), Supplemental Security Income-State Supplementary Program (SSI-SSP), or county-only funds. As used in this section ''parent'' includes any person specified in Section 903. Whenever the county welfare department or the

placing agency determines that a court order would be advisable and effective, the department or the agency shall notify the local child support agency, or the financial evaluation officer designated pursuant to Section 903.45, who shall proceed pursuant to Section 903.4.

SEC. 121. Section 10082 of the Welfare and Institutions Code is amended to read:

10082. (a) The department, through the Franchise Tax Board as its agent, shall be responsible for procuring, in accordance with Section 10083, developing, implementing, and maintaining the operation of the California Child Support Automation System in all California counties. This project shall, to the extent feasible, use the same sound project management practices that the Franchise Tax Board has developed in successful tax automation efforts. The single statewide system shall be operative in all California counties and shall also include the State Case Registry, the State Disbursement Unit and all other necessary data bases and interfaces. The system shall provide for the sharing of all data and case files, standardized functions across all of the counties, timely and accurate payment processing and centralized payment disbursement from a single location in the state. The system may be built in phases with payments contingent on acceptance of agreed upon deliverables. As appropriate, additional payments may be made to the vendors for predefined levels of higher performance once the system is in operation.

(b) All ongoing interim automation activities apart from the procurement, development, implementation, and maintenance of the California Child Support Automation System, including Year 2000 remediation efforts and system conversions, shall remain with the department, and shall not be the responsibility of the Franchise Tax Board. However, the department shall ensure that all interim automation activities are consistent with the procurement, development, implementation, and maintenance of the California Child Support Automation System by the Franchise Tax Board through the project charter described in Section 10083 and through continuous consultation.

(c) The department shall seek, at the earliest possible date, all federal approvals and waivers necessary to secure financial participation and system design approval of the California Child Support Automation System.

(d) The department shall seek federal funding for the maintenance and operation of all county child support automation systems until the time that the counties transition to the California Child Support Automation System.

(e) The department shall direct local child support agencies, if it determines it is necessary, to modify their current automation systems or change to a different system, in order to meet the goal of statewide automation.

(f) Notwithstanding any state policies, procedures, or guidelines, including those set forth in state manuals, all state agencies shall cooperate with the Franchise Tax Board to expedite the procurement, development, implementation, and operation of the California Child Support Automation System and shall delegate to the Franchise Tax Board, to the full extent possible, all functions including acquisition authority as provided in Section 12102 of the Public Contract Code, that may assist the Franchise Tax Board. All state agencies shall give review processes affecting the single statewide automation system their highest priority and expedite these review processes.

(g) The Franchise Tax Board shall employ the expertise needed for the successful and efficient implementation of the single statewide child support automation system and, therefore, shall be provided three Career Executive Assignment Level 2 positions, and may enter into personal services agreements with one or more persons, at the prevailing market rates for the kind or quality of services furnished, provided the agreements do not cause the net displacement of civil service employees.

(h) All funds appropriated to the Franchise Tax Board for purposes of this chapter shall be used in a manner consistent with the authorized budget without any other limitations.

(i) The department and the Franchise Tax Board shall consult with local child support agencies and child support advocates on the implementation of the single statewide child support automation system.

(j) (1) Notwithstanding the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), through December 31, 2000, the department may implement the applicable provisions of this chapter through family support division letters or similar instructions from the director.

(2) The department may adopt regulations to implement this chapter in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulation filed with the Office of Administrative Law on or before January 1, 2003, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. These emergency regulations shall remain in effect for no more than 180 days.

SEC. 122. Section 10604.5 of the Welfare and Institutions Code is amended to read:

10604.5. (a) (1) Commencing July 1, 1992, the department shall pay only those county welfare department claims for federal or state reimbursement of administration and services under this division which

are filed with the department within nine months of the end of the calendar quarter in which the costs are paid. A claim filed after that time may only be paid if the claim falls within the exceptions set forth in federal law. Any claim filed with the department after July 1, 1985, shall be subject to these limitations.

(2) The department may change the nine-month limitation specified in paragraph (1), as deemed necessary by the department to comply with federal changes which affect claiming time limits.

(b) (1) The department may waive the time limit imposed by subdivision (a) if the department determines there was good cause for a county's failure to file a claim or claims within the time limit.

(2) (A) For purposes of this subdivision, ''good cause'' means circumstances which are beyond the county's control, including acts of God and documented action or inaction by the state or federal government.

(B) ''Circumstances beyond the county's control'' do not include neglect or failure on the part of the county or any of its offices, officers, or employees.

(C) A county shall request a waiver of the time limit imposed by this section for good cause in accordance with regulations adopted and promulgated by the department.

(3) The department's authority to waive the time limit under this subdivision shall be subject to the availability of funds and shall not apply to claims submitted beyond 18 months after the end of the calendar quarter in which costs were paid.

SEC. 123. Section 10604.6 of the Welfare and Institutions Code is amended to read:

10604.6. (a) The department shall pay only those assistance claims for federal or state reimbursement under this division which are filed with the department within 18 months after the end of the calendar quarter in which the costs are paid.

(b) Any claim which is filed after the time specified in subdivision (a) may be paid only if an exception under federal law applies to that claim.

SEC. 124. Section 11457 of the Welfare and Institutions Code is amended to read:

11457. Money from noncustodial parents for child or spousal support with respect to whom an assignment under Section 11477 has been made shall be paid directly to the local child support agency and shall not be paid directly to the family. Such absent parent support payments, when collected by or paid through any public officer or agency, shall be transmitted to the county department providing aid under this chapter.

The Department of Child Support Services, by regulation, shall establish procedures not in conflict with federal law, for the distribution of such noncustodial parent support payments.

If an amount collected as child or spousal support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under subdivision (a) of Section 11477 for the current months and all past months.

SEC. 125. Section 11477 of the Welfare and Institutions Code is amended to read:

11477. As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall do all of the following:

(a) (1) Assign to the county any rights to support from any other person the applicant or recipient may have on his or her own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving aid, not exceeding the total amount of cash assistance provided to the family under this chapter. Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state. If support rights are assigned pursuant to this subdivision, the assignee may become an assignee of record by the local child support agency or other public official filing with the court clerk an affidavit showing that an assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record.

(2) Support that has been assigned pursuant to paragraph (1) and that accrues while the family is receiving aid under this chapter shall be permanently assigned until the entire amount of aid paid has been reimbursed.

(3) If the federal government does not permit states to adopt the same order of distribution for preassistance and postassistance child support arrears that are assigned on or after October 1, 1998, support arrears that accrue before the family receives aid under this chapter that are assigned pursuant to this subdivision shall be assigned as follows:

(A) Child support assigned prior to January 1, 1998, shall be permanently assigned until aid is no longer received and the entire amount of aid has been reimbursed.

(B) Child support assigned on or after January 1, 1998, but prior to October 1, 2000, shall be temporarily assigned until aid under this chapter is no longer received and the entire amount of aid paid has been reimbursed or until October 1, 2000, whichever comes first.

(C) On or after October 1, 2000, support assigned pursuant to this subdivision that was not otherwise permanently assigned shall be temporarily assigned to the county until aid is no longer received.

(D) On or after October 1, 2000, support that was temporarily assigned pursuant to this subdivision shall, when a payment is received from the federal tax intercept program, be temporarily assigned until the entire amount of aid paid has been reimbursed.

(4) If the federal government permits states to adopt the same order of distribution for preassistance and postassistance child support arrears, child support arrears shall be assigned, as follows:

(A) Child support assigned pursuant to this subdivision prior to October 1, 1998, shall be assigned until aid under this chapter is no longer received and the entire amount has been reimbursed.

(B) On or after October 1, 1998, child support assigned pursuant to this subdivision that accrued before the family receives aid under this chapter and that was not otherwise permanently assigned, shall be temporarily assigned until aid under this chapter is no longer received.

(C) On or after October 1, 1998, support that was temporarily assigned pursuant to this subdivision shall, when a payment is received from the federal tax intercept program, be temporarily assigned until the entire amount of aid paid has been reimbursed.

(b) (1) Cooperate with the county welfare department and local child support agency in establishing the paternity of a child of the applicant or recipient born out of wedlock with respect to whom aid is claimed, and in establishing, modifying, or enforcing a support order with respect to a child of the individual for whom aid is requested or obtained, unless the applicant or recipient qualifies for a good cause exception as provided in Section 11477.04. The granting of aid shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the local child support agency in securing support and determining paternity, where applicable. The local child support agency shall have staff available, in person or by telephone, at all county welfare offices and shall conduct an interview with each applicant to obtain information necessary to establish paternity and establish, modify, or enforce a support order at the time of the initial interview with the welfare office. The local child support agency shall make the determination of cooperation. If the applicant or recipient attests under penalty of perjury that he or she cannot provide the information required by this subdivision, the local child support agency shall make a finding regarding whether the individual could reasonably be expected to provide the information, before the local child support agency determines whether the individual is cooperating. In making the finding, the local child support agency shall consider all of the following:

(A) The age of the child for whom support is sought.

(B) The circumstances surrounding the conception of the child.

(C) The age or mental capacity of the parent or caretaker of the child for whom aid is being sought.

(D) The time that has elapsed since the parent or caretaker last had contact with the alleged father or obligor.

(2) Cooperation includes the following:

(A) Providing the name of the alleged parent or obligor and other information about that person if known to the applicant or recipient, such as address, social security number, telephone number, place of employment or school, and the names and addresses of relatives or associates.

(B) Appearing at interviews, hearings, and legal proceedings provided the applicant or recipient is provided with reasonable advance notice of the interview, hearing, or legal proceeding and does not have good cause not to appear.

(C) If paternity is at issue, submitting to genetic tests, including genetic testing of the child, if necessary.

(D) Providing any additional information known to or reasonably obtainable by the applicant or recipient necessary to establish paternity or to establish, modify, or enforce a child support order.

(3) A recipient or applicant shall not be required to sign a voluntary declaration of paternity, as set forth in Chapter 3 (commencing with Section 7570) of Part 2 of Division 12 of the Family Code, as a condition of cooperation.

SEC. 126. Section 11477.02 of the Welfare and Institutions Code is amended to read:

11477.02. Prior to referral of any individual or recipient, or that person's case, to the local child support agency for child support services under Section 17400 or 17404 of the Family Code, the county welfare department shall determine if an applicant or recipient has good cause for noncooperation, as set forth in Section 11477.04. If the applicant or recipient claims a good cause exception at any subsequent time to the county welfare department or the local child support agency, the local child support agency shall suspend child support services until the county welfare department determines the good cause claim, as set forth in Section 11477.04. If good cause is determined to exist, the local child support agency shall suspend child support services until the applicant or recipient requests their resumption, and shall take such other measures as are necessary to protect the applicant or recipient and the children. If the applicant or recipient is the parent of the child for whom aid is sought and the parent is found to have not cooperated without good cause as provided in Section 11477.04, the applicant's or recipient's

family grant shall be reduced by 25 percent for such time as the failure to cooperate lasts.

SEC. 127. Section 11479.7 of the Welfare and Institutions Code is repealed.

SEC. 128. Section 11484 is added to the Welfare and Institutions Code, to read:

11484. On request, all state, county, and local agencies shall cooperate with an investigator of an agency whose primary function is to detect, prevent, or prosecute public assistance fraud, by providing all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid, or attempted to obtain aid for an individual under this chapter. That information is subject to confidentiality requirements under Chapter 5 (commencing with Section 10850) of Part 2. For purposes of this section, ''information'' shall not include taxpayer return information as defined in Section 19549 of the Revenue and Taxation Code, unless disclosure of this information is expressly authorized pursuant to Article 2 (commencing with Section 19501) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

SEC. 129. Section 14008.6 of the Welfare and Institutions Code is amended to read:

14008.6. As a condition of eligibility for medical services provided under this chapter or Chapter 8 (commencing with Section 14200), each applicant or beneficiary shall:

(a) Assign to the state any rights to medical support and to payments for medical care from a third party that an individual may have on his of her own behalf or on behalf of any other family member for whom that individual has the legal authority to assign such rights, and is applying for or receiving medical services. Receipt of medical services under this chapter or Chapter 8 (commencing with Section 14200) shall operate as an assignment by operation of law. If those rights are assigned pursuant to this subdivision, the assignee may become an assignee of record by the local child support agency or other public official filing with the court clerk an affidavit showing that an assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record.

(b) Cooperate, as defined by subdivision (b) of Section 11477, with the local child support agency in establishing the paternity of a child born out of wedlock with respect to whom medical services are requested or claimed, and for whom that individual can legally assign the rights described in subdivision (a), and in obtaining any medical support, as provided in Section 17400 of the Family Code, and payments, as

described in subdivision (a), due any person for whom medical services are requested or obtained.

(c) Cooperate with the state in identifying and providing information to assist the state in pursuing any third party who may be liable to pay for care and services available under the Medi-Cal program.

(d) The local child support agency shall verify that the applicant or recipient refused to offer reasonable cooperation prior to determining that the applicant or recipient is ineligible. The granting of medical services shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the district attorney in securing medical support and determining paternity, where applicable.

(e) An applicant or beneficiary shall be considered to be cooperating with the local child support agency and shall be eligible for medical services, if otherwise eligible, if the applicant or beneficiary cooperates to the best of his or her ability or has good cause for refusal to cooperate with the requirements in subdivisions (b) and (c), as defined by Section 11477.04. The county welfare department shall make the determination of whether good cause for refusal to cooperate exists.

The county welfare department and the local child support agency shall ensure that all applicants for or beneficiaries of medical services under this chapter or Chapter 8 (commencing with Section 14200) are properly notified of the conditions imposed by this section.

SEC. 130. Section 14124.93 of the Welfare and Institutions Code is amended to read:

14124.93. (a) The Department of Child Support Services shall provide payments to the local child support agency of fifty dollars ($50) per case for obtaining third-party health coverage or insurance of beneficiaries.

(b) A county shall be eligible for a payment if the county obtains third-party health coverage or insurance for applicants or recipients of Title IV-D services not previously covered, or for whom coverage has lapsed, and the county provides all required information on a form approved by both the Department of Child Support Services and the State Department of Health Services.

SEC. 130.1. Section 12.1 of this bill incorporates amendments to Section 699.510 of the Code of Civil Procedure proposed by both this bill and AB 2405. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 699.510 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2405, in which case Section 12 of this bill shall not become operative.

SEC. 130.2. Section 29 of this bill incorporates amendments to Section 3751.5 of the Family Code proposed by both this bill and AB

2130. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 3751.5 of the Family Code, and (3) this bill is enacted after AB 2130, in which case Section 28 of this bill shall not become operative.

SEC. 130.3. Section 97.1 of this bill incorporates amendments to Section 11552 of the Government Code proposed by both this bill and SB 150. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11552 of the Government Code, and (3) this bill is enacted after SB 150, in which case Section 97 of this bill shall not become operative.

SEC. 130.4. Section 98.1 of this bill incorporates amendments to Section 12419.3 of the Government Code proposed by both this bill and AB 2906. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 12419.3 of the Government Code, and (3) this bill is enacted after AB 2906, in which case Section 98 of this bill shall not become operative.

SEC. 130.5. Section 100.1 of this bill incorporates amendments to Section 26746 of the Government Code proposed by both this bill and AB 1768. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 26746 of the Government Code, and (3) this bill is enacted after AB 1768, in which case Section 100 of this bill shall not become operative.

SEC. 130.6. Section 111.1 of this bill incorporates amendments to Section 11105 of the Penal Code proposed by both this bill and SB 2161. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11105 of the Penal Code, and (3) this bill is enacted after SB 2161, in which case Section 111 of this bill shall not become operative.

SEC. 130.7. Section 111.5 of this bill incorporates amendments to Section 13300 of the Penal Code proposed by both this bill and SB 2161. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 13300 of the Penal Code, and (3) this bill is enacted after SB 2161, in which case Section 111.3 of this bill shall not become operative.

SEC. 131. 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. 132. 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 clarification in the law regarding the entities authorized and directed to enforce child support obligations, it is necessary that this act take effect immediately.

CHAPTER 809

An act to amend Section 3751.5 of the Family Code, relating to family health coverage.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 3751.5 of the Family Code is amended to read:

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

(1) The child was born out of wedlock.

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

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

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

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

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

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

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

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

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

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

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

(1) Provide any information, including, but not limited to, the health insurance membership or identification card regarding the child, the evidence of coverage and disclosure form, and any other information provided to the covered parent about the child's health care coverage to the noncovered parent having custody of the child or any other person having custody of the child and to the district attorney when requested by the district attorney.

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

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

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

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

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

(g) For purposes of this section, the insurer shall notify the covered parent and noncovered parent having custody of the child or any other person having custody of the child in writing at any time that health insurance for the child is terminated.

(h) The requirements of subdivision (g) shall not apply unless the court, employer, or person having custody of the child provides the insurer with one of the following:

(1) A qualified medical child support order that meets the requirements of subdivision (a) of Section 1169 of Title 29 of the United States Code.

(2) A health insurance coverage assignment or assignment order made pursuant to Section 3761.

(3) A national medical support notice made pursuant to Section 3773.

(i) The noncovered parent or person having custody of the child may contact the insurer, by telephone or in writing, and request information about the health insurance coverage for the child. Upon request of the noncovered parent or person having custody of the child, the insurer shall provide the requested information that is specific to the health insurance coverage for the child.

CHAPTER 810

An act to add Article 4.6 (commencing with Section 1366.35) and Article 10.5 (commencing with Section 1399.801) to, Chapter 2.2 of Division 2 of the Health and Safety Code, and to add Section 10844 to, and to add Chapter 8.5 (commencing with Section 10785) and Chapter 9.5 (commencing with Section 10900) to, Part 2 of Division 2 of, the Insurance Code, relating to health care coverage.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Article 4.6 (commencing with Section 1366.35) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 4.6. Coverage for Federally Eligible Defined Individuals

1366.35. (a) A health care service plan providing coverage for hospital, medical, or surgical benefits under an individual health care service plan contract may not, with respect to a federally eligible defined individual desiring to enroll in individual health insurance coverage, decline to offer coverage to, or deny enrollment of, the individual or impose any preexisting condition exclusion with respect to the coverage.

(b) For purposes of this section, ''federally eligible defined individual'' means an individual who, as of the date on which the individual seeks coverage under this section, meets all of the following conditions:

(1) Has had 18 or more months of creditable coverage, and whose most recent prior creditable coverage was under a group health plan, a federal governmental plan maintained for federal employees, or a governmental plan or church plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002).

(2) Is not eligible for coverage under a group health plan, Medicare, or Medi-Cal, and does not have other health insurance coverage.

(3) Was not terminated from his or her most recent creditable coverage due to nonpayment of premiums or fraud.

(4) If offered continuation coverage under COBRA or Cal-COBRA, has elected and exhausted that coverage.

(c) Every health care service plan shall comply with applicable federal statutes and regulations regarding the provision of coverage to federally eligible defined individuals, including any relevant application periods.

(d) A health care service plan shall offer the following health benefit plan contracts under this section that are designed for, made generally available to, are actively marketed to, and enroll, individuals: (1) either the two most popular products as defined in Section 300gg-41(c)(2) of Title 42 of the United States Code and Section 148.120(c)(2) of Title 45 of the Code of Federal Regulations or (2) the two most representative products as defined in Section 300gg-41(c)(3) of the United States Code and Section 148.120(c)(3) of Title 45 of the Code of Federal Regulations, as determined by the plan in compliance with federal law. A health care service plan that offers only one health benefit plan contract to individuals, excluding health benefit plans offered to Medi-Cal or Medicare beneficiaries, shall be deemed to be in compliance with this article if it offers that health benefit plan contract to federally eligible defined individuals in a manner consistent with this article.

(e) (1) In the case of a health care service plan that offers health insurance coverage in the individual market through a network plan, the plan may do both of the following:

(A) Limit the individuals who may be enrolled under that coverage to those who live, reside, or work within the service area for the network plan.

(B) Within the service area of the plan, deny coverage to individuals if the plan has demonstrated to the director that the plan will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contractholders and enrollees

and individual enrollees, and that the plan is applying this paragraph uniformly to individuals without regard to any health status related factor of the individuals and without regard to whether the individuals are federally eligible defined individuals.

(2) A health care service plan, upon denying health insurance coverage in any service area in accordance with subparagraph (B) of paragraph (1), may not offer coverage in the individual market within that service area for a period of 180 days after the coverage is denied.

(f) (1) A health care service plan may deny health insurance coverage in the individual market to a federally eligible defined individual if the plan has demonstrated to the director both of the following:

(A) The plan does not have the financial reserves necessary to underwrite additional coverage.

(B) The plan is applying this subdivision uniformly to all individuals in the individual market and without regard to any health status-related factor of the individuals and without regard to whether the individuals are federally eligible individuals.

(2) A health care service plan, upon denying individual health insurance coverage in any service area in accordance with paragraph (1), may not offer that coverage in the individual market within that service area for a period of 180 days after the date the coverage is denied or until the issuer has demonstrated to the director that the plan has sufficient financial reserves to underwrite additional coverage, whichever is later.

(g) The requirement pursuant to federal law to furnish a certificate of creditable coverage shall apply to health insurance coverage offered by a health care service plan in the individual market in the same manner as it applies to a health care service plan in connection with a group health benefit plan.

(h) A health care service plan shall compensate a life agent or fire and casualty broker-agent whose activities result in the enrollment of federally eligible defined individuals in the same manner and consistent with the renewal commission amounts as the plan compensates life agents or fire and casualty broker-agents for other enrollees who are not federally eligible defined individuals and who are purchasing the same individual health benefit plan contract.

(i) Every health care service plan shall disclose as part of its COBRA or Cal-COBRA disclosure and enrollment documents, an explanation of the availability of guaranteed access to coverage under the Health Insurance Portability and Accountability Act of 1996, including the necessity to enroll in and exhaust COBRA or Cal-COBRA benefits in order to become a federally eligible defined individual.

(j) No health care service plan may request documentation as to whether or not a person is a federally eligible defined individual other than is permitted under applicable federal law or regulations.

(k) This section shall not apply to coverage defined as excepted benefits pursuant to Section 300gg(c) of Title 42 of the United States Code.

(*l*) This section shall apply to health care service plan contracts offered, delivered, amended, or renewed on or after January 1, 2001.

SEC. 2. Article 10.5 (commencing with Section 1399.801) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 10.5. Individual Access to Contracts for Health Care Services

1399.801. As used in this article:

(a) ''Creditable coverage'' means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (CHAMPUS).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (FEHBP).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(*l*) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under 22 U.S.C.A. 2504(e) of the Peace Corps Act.

(b) ''Dependent'' means the spouse or child of an eligible individual or other individual applying for coverage, subject to applicable terms of the health care plan contract covering the eligible person.

(c) ''Federally eligible defined individual'' means an individual who as of the date on which the individual seeks coverage under this part, (1) has 18 or more months of creditable coverage, and whose most recent prior creditable coverage was under a group health plan, a federal governmental plan maintained for federal employees, or a governmental plan or church plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002), (2) is not eligible for coverage under a group health plan, Medicare, or Medi-Cal, and has no other health insurance coverage, (3) was not terminated from his or her most recent creditable coverage due to nonpayment of premiums or fraud, and (4) if offered continuation coverage under COBRA or Cal-COBRA, had elected and exhausted this coverage.

(d) ''In force business'' means an existing health benefit plan contract issued by the plan to a federally eligible defined individual.

(e) ''New business'' means a health care service plan contract issued to an eligible individual that is not the plan's in force business.

(f) ''Preexisting condition provision'' means a contract provision that excludes coverage for charges and expenses incurred during a specified period following the eligible individual's effective date, as to a condition for which medical advice, diagnosis, and care of treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

1399.802. Every health care service plan offering plan contracts to individuals shall, in addition to complying with the provisions of this chapter and the rules adopted thereunder, comply with the provisions of this article.

1399.803. Nothing in this article shall be construed to preclude the application of this chapter to either of the following: (a) an association, trust, or other organization acting as a health care service plan as defined under Section 1345, or (b) an association, trust, multiple employer welfare arrangement, or other organization or person presenting information regarding a health care service plan to persons who may be interested in subscribing or enrolling in the plan.

1399.804. (a) Commencing January 1, 2001, a plan shall fairly and affirmatively offer, market, and sell the health care service plan contracts described in subdivision (d) of Section 1366.35 that are sold to individuals or to associations that include individuals to all federally eligible defined individuals in each service area in which the plan provides or arranges for the provision of health care services. Each plan

shall make available to each federally eligible defined individual the identified health care service plan contracts which the plan offers and sells to individuals or to associations that include individuals.

(b) The plan may not reject an application from a federally eligible defined individual for a health care service plan contract under the following circumstances:

(1) The federally eligible defined individual as defined by subdivision (c) of Section 1399.801 agrees to make the required premium payments.

(2) The federally eligible defined individual, and his or her dependents who are to be covered by the plan contract, work or reside in the service area in which the plan provides or otherwise arranges for the provision of health care services.

(c) No plan or solicitor shall, directly or indirectly, encourage or direct federally eligible defined individuals to refrain from filing an application for coverage with a plan because of health status, claims experience, industry, occupation, receipt of health care, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, disability, or geographic location provided that it is within the plan's approved service area.

(d) No plan shall, directly or indirectly, enter into any contract, agreement, or arrangement with a solicitor that provides for or results in the compensation paid to a solicitor for the sale of a health care service plan contract to be varied because of health status, claims experience, industry, occupation, receipt of health care, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, disability, or geographic location of the individual.

(e) Each plan shall comply with the requirements of Section 1374.3.

1399.805. (a) (1) After the federally eligible defined individual submits a completed application form for a plan contract, the plan shall, within 30 days, notify the individual of the individual's actual premium charges for that plan contract, unless the plan has provided notice of the premium charge prior to the application being filed. In no case shall the premium charged for any health care service plan contract identified in subdivision (d) of Section 1366.35 exceed the following amounts:

(A) For health care service plan contracts that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(B) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual. The individual shall have 30 days in which to exercise the right to buy coverage at the quoted premium rates.

(2) A plan may adjust the premium based on family size, not to exceed the following amounts:

(A) For health care service plans that offer services through a preferred provider arrangement, the average of the Major Risk Medical Insurance Program rate for families of the same size that reside in the same geographic area as the federally eligible defined individual.

(B) For health care service plans identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to a family that is of the same size and resides in the same geographic area as the federally eligible defined individual.

(b) When a federally eligible defined individual submits a premium payment, based on the quoted premium charges, and that payment is delivered or postmarked, whichever occurs earlier, within the first 15 days of the month, coverage shall begin no later than the first day of the following month. When that payment is neither delivered or postmarked until after the 15th day of a month, coverage shall become effective no later than the first day of the second month following delivery or postmark of the payment.

(c) During the first 30 days after the effective date of the plan contract, the individual shall have the option of changing coverage to a different plan contract offered by the same health care service plan. If the individual notified the plan of the change within the first 15 days of a month, coverage under the new plan contract shall become effective no later than the first day of the following month. If an enrolled individual notified the plan of the change after the 15th day of a month, coverage under the new plan contract shall become effective no later than the first day of the second month following notification.

1399.806. A plan may not exclude any federally eligible defined individual, or his or her dependents, who would otherwise be entitled to health care services on the basis of an actual or expected health condition of that individual or dependent. No plan contract may limit or exclude

coverage for a specific federally eligible defined individual, or his or her dependents, by type of illness, treatment, medical condition, or accident.

1399.809. The director may require a plan to discontinue the offering of contracts or the acceptance of applications from any individual upon a determination by the director that the plan does not have sufficient financial viability, organization, and administrative capacity to assure the delivery of health care services to its enrollees. In determining whether the conditions of this section have been met, the director shall consider, but not be limited to, the plan's compliance with the requirements of Section 1367, Article 6 (commencing with Section 1375), and the rules adopted thereunder.

1399.810. All health care service plan contracts offered to a federally eligible defined individual shall be renewable with respect to the individual and dependents at the option of the contractholder except in cases of:

(a) Nonpayment of the required premiums.

(b) Fraud or misrepresentation by the contractholder.

(c) The plan ceases to provide or arrange for the provision of health care services for individual health care service plan contracts in this state, provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing individual health benefit plans in this state is provided to the director and to the contractholder.

(2) Individual health care service plan contracts subject to this chapter shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan that remains in force, any plan that ceases to offer for sale new individual health care service plan contracts shall continue to be governed by this article with respect to business conducted under this article.

(3) A plan that ceases to write new individual business in this state after January 1, 2001, shall be prohibited from offering for sale new individual health care service plan contracts in this state for a period of three years from the date of the notice to the director.

(d) When the plan withdraws a health care service plan contract from the individual market, provided that the plan makes available to eligible individuals all plan contracts that it makes available to new individual business, and provided that the premium for the new plan contract complies with the renewal increase requirements set forth in Section 1399.811.

1399.811. Premiums for contracts offered, delivered, amended, or renewed by plans on or after January 1, 2001, shall be subject to the following requirements:

(a) The premium for new business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(b) The premium for in force business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual. The premium effective on January 1, 2001, shall apply to in force business at the earlier of either the time of renewal or July 1, 2001.

(c) The premium applied to a federally eligible defined individual may not increase by more than the following amounts:

(1) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that offer services through a preferred provider arrangement, the average increase in the premiums charged to a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual.

(2) For health care service plan contracts identified in subdivision (d) of Section 1366.35 that do not offer services through a preferred provider arrangement, the increase in premiums charged to a nonfederally qualified individual who is of the same age and resides in the same geographic area as the federally defined eligible individual. The premium for an eligible individual may not be modified more frequently than every 12 months.

(2) For a contract that a plan has discontinued offering, the premium applied to the first rating period of the new contract that the federally eligible defined individual elects to purchase shall be no greater than the premium applied in the prior rating period to the discontinued contract.

1399.812. Plans shall apply premiums consistently with respect to all federally eligible defined individuals who apply for coverage.

1399.813. In connection with the offering for sale of any plan contract to an individual, each plan shall make a reasonable disclosure, as part of its solicitation and sales materials, of all individual contracts.

1399.814. Nothing in this article shall be construed to require a health benefit plan to offer a contract to an individual if the plan does not otherwise offer contracts to individuals.

1399.815. (a) At least 20 business days prior to renewing or amending a plan contract subject to this article, or at least 20 business days prior to the initial offering of a plan contract subject to this article, a plan shall file a notice of an amendment with the director in accordance with the provisions of Section 1352. The notice of an amendment shall include a statement certifying that the plan is in compliance with subdivision (a) of Section 1399.805 and with Section 1399.811. Any action by the director, as permitted under Section 1352, to disapprove, suspend, or postpone the plan's use of a plan contract shall be in writing, specifying the reasons the plan contract does not comply with the requirements of this chapter.

(b) Prior to making any changes in the premium, the plan shall file an amendment in accordance with the provisions of Section 1352, and shall include a statement certifying the plan is in compliance with subdivision (a) of Section 1399.805 and with Section 1399.811. All other changes to a plan contract previously filed with the director pursuant to subdivision (a) shall be filed as an amendment in accordance with the provisions of Section 1352, unless the change otherwise would require the filing of a material modification.

1399.816. Carriers and health care service plans that offer contracts to individuals may elect to establish a mechanism or method to share in the financing of high-risk individuals. This mechanism or method shall be established through a committee of all carriers and health care service plans offering coverage to individuals by July 1, 2002, and shall be implemented by January 1, 2003. If carriers and health care service plans wish to establish a risk-sharing mechanism but cannot agree on the terms and conditions of such an agreement, the Managed Risk Medical Insurance Board shall develop a risk-sharing mechanism or method by January 1, 2003, and it shall be implemented by July 1, 2003.

1399.817. The director may issue regulations that are necessary to carry out the purposes of this article. Any rules and regulations adopted pursuant to this article may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Until December 31, 2001, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall be enforced by the director.

1399.818. This article shall apply to health care service plan contracts offered, delivered, amended, or renewed on or after January 1, 2001.

SEC. 3. Chapter 8.5 (commencing with Section 10785) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 8.5. COVERAGE FOR FEDERALLY ELIGIBLE DEFINED INDIVIDUALS

10785. (a) A disability insurer that covers hospital, medical, or surgical expenses under an individual health benefit plan as defined in subdivision (a) of Section 10198.6 may not, with respect to a federally eligible defined individual desiring to enroll in individual health insurance coverage, decline to offer coverage to, or deny enrollment of, the individual or impose any preexisting condition exclusion with respect to the coverage.

(b) For purposes of this section, ''federally eligible defined individual'' means an individual who, as of the date on which the individual seeks coverage under this section, meets all of the following conditions:

(1) Has had 18 or more months of creditable coverage, and whose most recent prior creditable coverage was under a group health plan, a federal governmental plan maintained for federal employees, or a governmental plan or church plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002).

(2) Is not eligible for coverage under a group health plan, Medicare, or Medi-Cal, and does not have other health insurance coverage.

(3) Was not terminated from his or her most recent creditable coverage due to nonpayment of premiums or fraud.

(4) If offered continuation coverage under COBRA or Cal-COBRA, has elected and exhausted that coverage.

(c) Every disability insurer that covers hospital, medical, or surgical expenses shall comply with applicable federal statutes and regulations regarding the provision of coverage to federally eligible defined individuals, including any relevant application periods.

(d) A disability insurer shall offer the following health benefit plans under this section that are designed for, made generally available to, are actively marketed to, and enroll, individuals: (1) either the two most popular products as defined in Section 300gg-41(c)(2) of Title 42 of the United States Code and Section 148.120(c)(2) of Title 45 of the Code of Federal Regulations or (2) the two most representative products as defined in Section 300gg-41(c)(3) of the United States Code and Section 148.120(c)(3) of Title 45 of the Code of Federal Regulations, as determined by the insurer in compliance with federal law. An insurer that offers only one health benefit plan to individuals, excluding health benefit plans offered to Medi-Cal or Medicare beneficiaries, shall be deemed to be in compliance with this chapter if it offers that health benefit plan contract to federally eligible defined individuals in a manner consistent with this chapter.

(e) (1) In the case of a disability insurer that offers health benefit plans in the individual market through a network plan, the insurer may do both of the following:

(A) Limit the individuals who may be enrolled under that coverage to those who live, reside, or work within the service area for the network plan.

(B) Within the service area covered by the health benefit plan, deny coverage to individuals if the insurer has demonstrated to the commissioner that the insured will not have the capacity to deliver services adequately to additional individual insureds because of its obligations to existing group policyholders, group contractholders and insureds, and individual insureds, and that the insurer is applying this paragraph uniformly to individuals without regard to any health status-related factor of the individuals and without regard to whether the individuals are federally eligible defined individuals.

(2) A disability insurer, upon denying health insurance coverage in any service area in accordance with subparagraph (B) of paragraph (1), may not offer health benefit plans through a network in the individual market within that service area for a period of 180 days after the coverage is denied.

(f) (1) A disability insurer may deny health insurance coverage in the individual market to a federally eligible defined individual if the insurer has demonstrated to the commissioner both of the following:

(A) The insurer does not have the financial reserves necessary to underwrite additional coverage.

(B) The insurer is applying this subdivision uniformly to all individuals in the individual market and without regard to any health status-related factor of the individuals and without regard to whether the individuals are federally eligible defined individuals.

(2) A disability insurer, upon denying individual health insurance coverage in any service area in accordance with paragraph (1), may not offer that coverage in the individual market within that service area for a period of 180 days after the date the coverage is denied or until the insurer has demonstrated to the commissioner that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.

(g) The requirement pursuant to federal law to furnish a certificate of creditable coverage shall apply to health benefits plans offered by a disability insurer in the individual market in the same manner as it applies to an insurer in connection with a group health benefit plan policy or group health benefit plan contract.

(h) A disability insurer shall compensate a life agent or fire and casualty broker-agent whose activities result in the enrollment of federally eligible defined individuals in the same manner and consistent with the renewal commission amounts as the insurer compensates life agents or fire and casualty broker-agents for other enrollees who are not federally eligible defined individuals and who are purchasing the same individual health benefit plan.

(i) Every disability insurer shall disclose as part of its COBRA or Cal-COBRA disclosure and enrollment documents, an explanation of the availability of guaranteed access to coverage under the Health Insurance Portability and Accountability Act of 1996, including the necessity to enroll in and exhaust COBRA or Cal-COBRA benefits in order to become a federally eligible defined individual.

(j) No disability insurer may request documentation as to whether or not a person is a federally eligible defined individual other than is permitted under applicable federal law or regulations.

(k) This section shall not apply to coverage defined as excepted benefits pursuant to Section 300gg(c) of Title 42 of the United States Code.

(*l*) This section shall apply to policies or contracts offered, delivered, amended, or renewed on or after January 1, 2001.

SEC. 4. Section 10844 is added to the Insurance Code, to read:

10844. A purchasing alliance may offer coverage pursuant to Chapter 9.5 (commencing with Section 10900).

SEC. 5. Chapter 9.5 (commencing with Section 10900) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 9.5. INDIVIDUAL ACCESS TO CONTRACTS FOR HEALTH CARE SERVICES

10900. As used in this chapter:

(a) ''Benefit plan design'' means a specific health coverage policy issued by a carrier to individuals, to trustees of associations that cover individuals. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health services that has significant incentives for the covered individuals to use the system.

(b) ''Carrier'' means any disability insurance company or any other entity that writes, issues, or administers health benefit plans, as defined in subdivision (a) of Section 10198.6, that cover individuals, regardless of the situs of the contract or master policyholder.

(c) ''Creditable coverage'' means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Champus supplement, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (CHAMPUS).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (FEHBP).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(*l*) of the Public Health Service Act, as amended by Public Law 104-191.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. 2504(e)).

(d) ''Dependent'' means the spouse or child of an eligible individual or other individual applying for coverage, subject to applicable terms of the health benefit plan covering the eligible person.

(e) ''Federally eligible defined individual'' means an individual who as of the date on which the individual seeks coverage under this part, (1) has 18 or more months of creditable coverage, and whose most recent prior creditable coverage was under a group health plan, a federal governmental plan maintained for federal employees, or a governmental plan or church plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002), (2) is not eligible for coverage under an employer-sponsored health benefit plan, Medicare, or Medi-Cal, and has no other health insurance coverage, (3) was not terminated from his or her most recent creditable coverage due to nonpayment of premiums or fraud, and (4) if offered continuation coverage under COBRA or Cal-COBRA, had elected and exhausted such coverage.

(f) ''In force business'' means an existing health benefit plan issued by a carrier to a federally eligible defined individual.

(g) ''New business'' means a health benefit plan issued to an eligible individual that is not the carrier's in force business.

(h) ''Preexisting condition provision'' means a policy provision that excludes coverage for charges and expenses incurred during a specified period following the eligible individual's effective date, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

10901. Every carrier offering health benefit plans to individuals shall comply with the provisions of this chapter and the rules adopted thereunder.

10901.1. Nothing in this chapter shall be construed to preclude the application of this chapter to either of the following: (a) an association, trust, or other organization acting as a health care service plan as defined under Section 1345, (b) an association, trust, multiple employer welfare arrangement, or other organization or person presenting information

regarding a health benefit plan to persons who may be interested in subscribing or enrolling in the plan.

10901.2. (a) Commencing January 1, 2001, a carrier shall fairly and affirmatively offer, market, and sell the health benefit plan designs described in subdivision (d) of Section 10785 that are sold to individuals or to associations that include individuals to all federally eligible defined individuals in each geographic region in which the carrier provides coverage for health care services. Each carrier shall make available to each federally eligible defined individual the identified health benefit plan designs which the plan offers and sells to individuals or to associations that include individuals.

(b) A carrier may not reject an application from a federally eligible defined individual for a benefit plan design under the following circumstances:

(1) The federally eligible defined individual as defined by subdivision (e) of Section 10900 agrees to make the required premium payments.

(2) The federally eligible defined individual, and his or her dependents who are to be covered by the carrier, work or reside in the service area in which the plan provides or otherwise arranges for the provision of health care services.

(c) No carrier or agent or broker shall, directly or indirectly, encourage or direct federally eligible defined individuals to refrain from filing an application for coverage with a carrier because of health status, claims experience, industry, occupation, receipt of health care, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, disability, or geographic location provided that it is within the carrier's approved service area.

(d) No carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent or broker that provides for or results in the compensation paid to a solicitor for the sale of a health benefit plan design to be varied because of health status, claims experience, industry, occupation, receipt of health care, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence, disability, or geographic location of the individual. This subdivision shall not apply with respect to a compensation arrangement that provides compensation to an agent or broker on the basis of percentage of premium, provided that the percentage shall not vary for the reasons listed in this subdivision.

(e) If a carrier enters into a contract, agreement, or other arrangement with a third-party administrator or other entity to provide administrative, marketing, or other services related to the offering of health benefit plans to individuals in this state, the third-party administrator shall be subject to this chapter.

10901.3. (a) (1) After the federally eligible defined individual submits a completed application form for a health benefit plan, the carrier shall, within 30 days, notify the individual of the individual's actual premium charges for that health benefit plan design. In no case shall the premium charged for any health benefit plan identified in subdivision (d) of Section 10785 exceed the following amounts:

(A) For health benefit plans that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(B) For health benefit plans identified in subdivision (d) of Section 10785 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual. The individual shall have 30 days in which to exercise the right to buy coverage at the quoted premium rates.

(2) A carrier may adjust the premium based on family size, not to exceed the following amounts:

(A) For health benefit plans that offer services through a preferred provider arrangement, the average of the Major Risk Medical Insurance Program rate for families of the same size that reside in the same geographic area as the federally eligible defined individual.

(B) For health benefit plans identified in subdivision (d) of Section 10785 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to a family that is of the same size and resides in the same geographic area as the federally eligible defined individual.

(b) When a federally eligible defined individual submits a premium payment, based on the quoted premium charges, and that payment is delivered or postmarked, whichever occurs earlier, within the first 15 days of the month, coverage shall begin no later than the first day of the following month. When that payment is neither delivered or postmarked until after the 15th day of a month, coverage shall become effective no

later than the first day of the second month following delivery or postmark of the payment.

(c) During the first 30 days after the effective date of the health benefit plan, the individual shall have the option of changing coverage to a different health benefit plan design offered by the same carrier. If the individual notified the plan of the change within the first 15 days of a month, coverage under the new health benefit plan shall become effective no later than the first day of the following month. If an enrolled individual notified the carrier of the change after the 15th day of a month, coverage under the health benefit plan shall become effective no later than the first day of the second month following notification.

10901.4. A carrier may not exclude any federally eligible defined individual, or his or her dependents, who would otherwise be entitled to health care services, on the basis of an actual or expected health condition of that individual or dependent. No health benefit plan may limit or exclude coverage for a specific federally eligible defined individual, or his or her dependents, by type of illness, treatment, medical condition, or accident.

10901.7. (a) The commissioner may require a carrier to discontinue the offering of health benefit plans or the acceptance of applications from any individual upon a determination by the commissioner that the plan carrier does not have sufficient financial viability, organization, and administrative capacity to assure the delivery of health care services to its enrollees.

(b) The commissioner's determination shall follow an evaluation that includes a certification by the commissioner that the acceptance of an application or applications would place the carrier in a financially impaired condition.

(c) A carrier that has not offered coverage or accepted applications pursuant to this chapter shall not offer coverage or accept applications for any individual until the commissioner has determined that the carrier has ceased to be financially impaired.

10901.8. All health benefit plans offered to a federally eligible defined individual shall be renewable with respect to the individual and dependents at the option of the enrolled individual except in cases of:

(a) Nonpayment of the required premiums.

(b) Fraud or misrepresentation by the enrolled individual.

(c) The carrier ceases to provide or arrange for the provision of health care services for individual health benefit plan contracts in this state, provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing individual health benefit plans in this state is provided to the commissioner and to the contractholder.

(2) Individual health benefit plan contracts subject to this chapter shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a carrier that remains in force, any carrier that ceases to offer for sale new individual health benefit plan contracts shall continue to be governed by this article with respect to business conducted under this chapter.

(3) A carrier that ceases to write new individual business in this state after the effective date of this chapter shall be prohibited from offering for sale new individual health benefit plan contracts in this state for a period of three years from the date of the notice to the commissioner.

(d) When a carrier withdraws a health benefit plan design from the individual market, provided that a carrier makes available to eligible individuals all health plan benefit designs that it makes available to new individual business, and provided that premium for the new health benefit plan complies with the renewal increase requirements set forth in Section 10901.9.

10901.9. Commencing January 1, 2001, premiums for health benefit plans offered, delivered, amended, or renewed by carriers shall be subject to the following requirements:

(a) The premium for new business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health benefit plans identified in subdivision (d) of Section 10785 that offer services through a preferred provider arrangement, the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health benefit plans identified in subdivision (d) of Section 10785 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 to 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(b) The premium for in force business for a federally eligible defined individual shall not exceed the following amounts:

(1) For health benefit plans identified in subdivision (d) of Section 10785 that offer services through a preferred provider arrangement, the

average premium paid by a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed the average premium paid by a subscriber of the Major Risk Medical Insurance Program who is 59 years of age and resides in the same geographic area as the federally eligible defined individual.

(2) For health benefit plans identified in subdivision (d) of Section 10785 that do not offer services through a preferred provider arrangement, 170 percent of the standard premium charged to an individual who is of the same age and resides in the same geographic area as the federally eligible defined individual. However, for federally qualified individuals who are between the ages of 60 and 64, inclusive, the premium shall not exceed 170 percent of the standard premium charged to an individual who is 59 years of age and resides in the same geographic area as the federally eligible defined individual. The premium effective on January 1, 2001, shall apply to in force business at the earlier of either the time of renewal or July 1, 2001.

(c) The premium applied to a federally eligible defined individual may not increase by more than the following amounts:

(1) For health benefit plans identified in subdivision (d) of Section 10785 that offer services through a preferred provider arrangement, the average increase in the premiums charged to a subscriber of the Major Risk Medical Insurance Program who is of the same age and resides in the same geographic area as the federally eligible defined individual.

(2) For health benefit plans identified in subdivision (d) of Section 10785 that do not offer services through a preferred provider arrangement, the increase in premiums charged to a nonfederally qualified individual who is of the same age and resides in the same geographic area as the federally defined eligible individual. The premium for an eligible individual may not be modified more frequently than every 12 months.

(2) For a contract that a carrier has discontinued offering, the premium applied to the first rating period of the new contract that the federally eligible defined individual elects to purchase shall be no greater than the premium applied in the prior rating period to the discontinued contract.

10902. Carriers shall apply premiums consistently with respect to all federally eligible defined individuals who apply for coverage.

10902.1. In connection with the offering for sale of any health benefit plan designed to an individual, each carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all individual contracts.

10902.2. Nothing in this chapter shall be construed to require a health benefit plan to offer a contract to an individual if the carrier does not otherwise offer contracts to individuals.

10902.3. (a) At least 20 business days prior to renewing or amending a health benefit plan contract subject to this chapter, or at least 20 business days prior to the initial offering of a health benefit plan subject to this chapter, a carrier shall file a statement with the commissioner in the same manner as required for small employers as outlined in Section 10717. The statement shall include a statement certifying that the carrier is in compliance with subdivision (a) of Section 10901.3 and with Section 10901.9. Any action by the commissioner, as permitted under Section 10717, to disapprove, suspend, or postpone the plan's use of a carrier's health benefit plan design shall be in writing, specifying the reasons the health benefit plan does not comply with the requirements of this chapter.

(b) Prior to making any changes in the premium, the carrier shall file an amendment in the same manner as required for small employers as outlined in Section 10717, and shall include a statement certifying the carrier is in compliance with subdivision (a) of Section 10901.3 and with Section 10901.9. All other changes to a health benefit plan previously filed with the commissioner pursuant to subdivision (a) shall be filed as an amendment in the same manner as required for small employers as outlined in Section 10717.

10902.4. Carriers and health care service plans that offer contracts to individuals may elect to establish a mechanism or method to share in the financing of high-risk individuals. This mechanism or method shall be established through a committee of all carriers and health care service plans offering coverage to individuals by July 1, 2002, and shall be implemented by January 1, 2003. If carriers and health care service plans wish to establish a risk-sharing mechanism but cannot agree on the terms and conditions of such an agreement, the Managed Risk Medical Insurance Board shall develop a risk-sharing mechanism or method by January 1, 2003, and it shall be implemented by July 1, 2003.

10902.5. The commissioner may issue regulations that are necessary to carry out the purposes of this chapter. Any rules and regulations adopted pursuant to this chapter may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Until December 31, 2001, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall be enforced by the commissioner.

10902.6. This chapter shall apply to policies or contracts offered, delivered, amended, or renewed on or after January 1, 2001.

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 811

An act to add Sections 5777.5, 5777.6, and 14456.5 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(a) Persons who receive Medi-Cal mental health services through mental health plans pursuant to Part 2.5 (commencing with Section 5775) of Division 5 and Article 5 (commencing with Section 14680) of Chapter 8.8 of Part 3 of Division 9 of the Welfare and Institutions Code, require timely access to prescription drugs prescribed by the Medi-Cal mental health plan providers because these prescription drugs may be crucial to maintaining stability and furthering treatment goals.

(b) Disputes about responsibility for authorizing or providing specific prescription drugs prescribed by Medi-Cal mental health plan providers have the effect of disrupting the timely access to prescription drugs needed by persons receiving services through Medi-Cal mental health plans.

(c) Medi-Cal recipients have the right to timely access to prescription drugs regardless of the entity responsible to provide or authorize coverage.

(d) Foster children who are placed outside their county of residence and who need specialty mental health services provided by county mental health plans encounter delays and difficulties in accessing these specialty mental health services.

(e) Under the federal Medicaid Act, including the Balanced Budget Act of 1997, the state has special responsibilities to children in foster care including those who are placed outside their county of residence. The state must ensure that foster children placed outside their county of

residence receive timely and appropriate access to necessary mental health services, including mental health services pursuant to the federal Early and Periodic Screening, Diagnosis and Treatment Program (42 U.S.C. Sec. 1396d(a)(4)(B).

SEC. 2. It is the intent of the Legislature that access to prescription medications and other services for Medi-Cal recipients who receive mental health services through county mental health plans and who are also members of Medi-Cal managed care plans or other health care plans shall be no less than the timely access enjoyed by Medi-Cal recipients who are not members of Medi-Cal managed care plans or who do not have other health care coverage.

SEC. 3. Section 5777.5 is added to the Welfare and Institutions Code, to read:

5777.5. (a) (1) The department shall require any mental health plan that provides Medi-Cal services to enter into a memorandum of understanding with any Medi-Cal managed care plan that provides Medi-Cal health services to some of the same Medi-Cal recipients served by the mental health plan. The memorandum of understanding shall comply with applicable regulations.

(2) For purposes of this section, a ''Medi-Cal managed care plan'' means any prepaid health plan or Medi-Cal managed care plan contracting with the State Department of Health Services to provide services to enrolled Medi-Cal beneficiaries under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9, or Part 4 (commencing with Section 101525) of Division 101 of the Health and Safety Code.

(b) The department shall require the memorandum of understanding to include all of the following:

(1) A process or entity to be designated by the local mental health plan to receive notice of actions, denials, or deferrals from the Medi-Cal managed care plan, and to provide any additional information requested in the deferral notice as necessary for a medical necessity determination.

(2) A requirement that the local mental health plan respond by the close of the business day following the day the deferral notice is received.

(c) The department may sanction a mental health plan pursuant to paragraph (1) of subdivision (e) of Section 5775 for failure to comply with this section.

(d) This section shall apply to any contracts entered into, amended, modified, extended, or renewed on or after January 1, 2001.

SEC. 4. Section 5777.6 is added to the Welfare and Institutions Code, to read:

5777.6. (a) Each local mental health plan shall establish a procedure to ensure access to outpatient mental health services, as

required by the Early Periodic Screening and Diagnostic Treatment program standards, for any child in foster care who has been placed outside his or her county of adjudication.

(b) The procedure required by subdivision (a) may be established through one or more of the following:

(1) The establishment of, and federal approval, if required, of, a statewide system or procedure.

(2) An arrangement between local mental health plans for reimbursement for services provided by a mental health plan other than the mental health plan in the county of adjudication and designation of an entity to provide additional information needed for approval or reimbursement. This arrangement shall not require providers who are already credentialed or certified by the mental health plan in the beneficiary's county of residence to be credentialed or certified by, or to contract with, the mental health plan in the county of adjudication.

(3) Arrangements between the mental health plan in the county of adjudication and mental health providers in the beneficiary's county of residence for authorization of, and reimbursement for, services. This arrangement shall not require providers credentialed or certified by, and in good standing with, the mental health plan in the beneficiary's county of residence to be credentialed or certified by the mental health plan in the county of adjudication.

(c) The department shall collect and keep statistics that will enable the department to compare access to outpatient specialty mental health services by foster children placed in their county of adjudication with access to outpatient specialty mental health services by foster children placed outside of their county of adjudication.

SEC. 5. Section 14456.5 is added to the Welfare and Institutions Code, to read:

14456.5. (a) For purposes of this section, Medi-Cal managed care plan means any prepaid health plan or Medi-Cal managed care plan contracting with the department to provide services to enrolled Medi-Cal beneficiaries under Chapter 7 (commencing with Section 14000) or this chapter, or Part 4 (commencing with Section 101525) of Division 101 of the Health and Safety Code.

(b) The department shall ensure that coverage is provided for medically necessary prescription medications and related medically necessary medical services that are prescribed by a local mental health plan provider, and are within the Medi-Cal scope of benefits, but are excluded from coverage under Part 2.5 (commencing with Section 5775) of Division 5, by doing, at least, all of the following:

(1) Requiring Medi-Cal managed care plans to comply with the following standards:

(A) The decision regarding responsibility and coverage for a prescription drug shall be made by the Medi-Cal managed care plan within 24 hours, or one business day, from the date the request for a decision is received by telephone or other telecommunication device.

(B) The decision regarding responsibility and coverage for services, such as laboratory tests, that are medically necessary because of medications prescribed by a mental health provider, shall be made by the Medi-Cal managed care plan within seven days following the date the request for a decision is received by telephone or other telecommunication device.

(C) If the decision of the Medi-Cal managed care plan on the request is a deferral because of a determination that the Medi-Cal managed care plan needs more information, the Medi-Cal managed care plan shall transmit notice of the deferral, by facsimile or by other telecommunication system, to the pharmacist or other service provider, to the prescribing mental health provider, and to a designated mental health plan representative. The notice shall set out with specificity what additional information is needed to make a medical necessity determination.

(D) Any denial of authorization or payment for a prescription medication or for any services such as laboratory tests that may be medically necessary because of medications ordered by a mental health plan provider shall set forth the reasons for the denial with specificity. The denial notice shall be transmitted by facsimile or other telecommunication system to the pharmacist or other service provider, to the prescribing mental health provider, to a designated mental health plan representative, and by mail to the Medi-Cal beneficiary.

(E) For purposes of subsequent requests for a medication, the local mental health plan provider prescribing the prescription medication shall be treated as a plan provider under subdivision (a) of Section 1367.22 of the Health and Safety Code.

(F) If the decision cannot be made within five working days because of a request for additional information, any Medi-Cal managed care plan licensed pursuant to Division 2 (commencing with Section 1340) of the Health and Safety Code shall inform the enrollee as required by paragraph (5) of subdivision (h) of Section 1367.01 of the Health and Safety Code. In regard to any Medi-Cal managed care plan contract as described pursuant to subdivision (a) that is issued, amended, or renewed on or after January 1, 2001, with a plan not licensed pursuant to Division 2 (commencing with Section 1340) of the Health and Safety Code, if the decision cannot be made within five working days because of a request for additional information as specified in subparagraph (C), the plan shall notify the enrollee, in writing, that the plan cannot make a decision to approve, modify, or deny the request for authorization. All

managed care plans shall, upon receipt of all information reasonably necessary for making the decision and that was requested by the plan, approve, modify, or deny the request for authorization within the timeframes specified in subparagraph (A) or (B), whichever applies.

(2) In consultation with the Medi-Cal managed care plans, the State Department of Mental Health, and local mental health plans establishing a process to recognize credentialing of local mental health plan providers, for the purpose of expediting approval of medications prescribed by a local mental health plan provider who is not contracting with the Medi-Cal managed care plan. In implementing this requirement, the Medi-Cal managed care plan shall not be required to violate licensure, accreditation, or certification requirements of other entities.

(3) Requiring any Medi-Cal managed care plan to enter into a memorandum of understanding with the local mental health plan. The memorandum of understanding shall comply with applicable regulations.

(c) The department may sanction a Medi-Cal managed care plan for violations of this section pursuant to Section 14088.23 or 14304.

(d) Every Medi-Cal managed care plan that provides prescription drug benefits and that maintains one or more drug formularies shall provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary of the Medi-Cal managed care plan, by therapeutic category, with an indication of whether any drugs on the list are preferred over other listed drugs. If the Medi-Cal managed care plan maintains more than one formulary, the plan shall notify the requester that a choice of formulary lists is available.

(e) This section shall apply to any contracts entered into, amended, modified, or extended on or after January 1, 2001.

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 812

An act to amend Sections 10231.2 and 10236 of, to add Sections 10236.1, 10236.11, 10236.12, 10236.13, and 10236.15 to, to add,

repeal, and add Section 10236.14 of, and to repeal Section 10235.22 of, the Insurance Code, relating to long-term care insurance.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. It is the intent of the Legislature that certain premiums and conditions for long-term care insurance shall be subject to the prior approval of the Insurance Commissioner.

SEC. 2. Section 10231.2 of the Insurance Code is amended to read:

10231.2. ''Long-term care insurance'' includes any insurance policy, certificate or rider advertised, marketed, offered, solicited, or designed to provide coverage for diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services which are provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes all products containing any of the following benefit types: coverage for institutional care including care in a nursing home, convalescent facility, extended care facility, custodial care facility, skilled nursing facility, or personal care home; home care coverage including home health care, personal care, homemaker services, hospice, or respite care; or community-based coverage including adult day care, hospice, or respite care. Long-term care insurance includes disability based long-term care policies but does not include insurance designed primarily to provide Medicare supplement or major medical expense coverage.

Long-term care policies, certificates, and riders shall be regulated under this chapter. The commissioner shall review and approve individual and group policies, certificates, riders, and outlines of coverage. Other applicable laws and regulations shall also apply to long-term care insurance insofar as they do not conflict with the provisions in this chapter. Long-term care benefits designed to provide coverage of 12 months or more that are contained in or amended to Medicare supplement or other disability policies and certificates shall be regulated under this chapter.

SEC. 3. Section 10235.22 of the Insurance Code is repealed.

SEC. 4. Section 10236 of the Insurance Code is amended to read:

10236. Every individual and group long-term care policy and certificate under a group long-term care policy shall be either guaranteed renewable or noncancelable.

(a) ''Guaranteed renewable'' means that the insured has the right to continue coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage or decline to renew, except that the insurer may, in accordance with

provisions in the policy, and in accordance with Section 10236.1, change the premium rates to all insureds in the same class. The ''class'' is determined by the insurer for the purpose of setting rates at the time the policy is issued.

(b) ''Noncancelable'' means the insured has the right to continue the coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage, decline to renew, or change the premium rate.

(c) Every long-term care policy and certificate shall contain an appropriately captioned renewability provision on page one, which shall clearly describe the initial term of coverage, the conditions for renewal and, if guaranteed renewable, a description of the class and of each circumstance under which the insurer may change the premium amount.

SEC. 5. Section 10236.1 is added to the Insurance Code, to read:

10236.1. Benefits under individual long-term care insurance policies issued before new premium rate schedules are approved under Section 10236.11 shall be deemed reasonable in relation to premiums if the expected loss ratio is at least 60 percent, calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including the following:

(a) Statistical credibility of incurred claims experience and earned premiums.

(b) The period for which rates are computed to provide coverage.

(c) Experienced and projected trends.

(d) Concentration of experience within early policy duration.

(e) Expected claim fluctuation.

(f) Experience refunds, adjustments, or dividends.

(g) Renewability features.

(h) All appropriate expense factors.

(i) Interest.

(j) Experimental nature of the coverage.

(k) Policy reserves.

(*l*) Mix of business by risk classification.

(m) Product features, such as long elimination periods, high deductibles, and high maximum limits.

SEC. 6. Section 10236.11 is added to the Insurance Code, to read:

10236.11. The premium rate schedules for all individual and group long-term care insurance policies issued in this state shall be filed with and receive the prior approval of the commissioner before the policy may be offered, sold, issued, or delivered to a resident of this state.

All initial rate filings shall be subject to the following:

(a) No approval for an initial premium schedule shall be granted unless the actuary performing the review for the commissioner certifies

that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. The certification may rely on supporting data in the filing. The actuary performing the review may request an actuarial demonstration that the assumptions the insurer has used are reasonable. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.

(b) The insurer shall submit to the commissioner for approval a rate filing for each policy form that includes at least all of the following information:

(1) An actuarial memorandum that describes the assumptions the insurer used to develop the premium rate schedule. The actuarial assumptions shall include, but not be limited to, a sufficiently detailed description of morbidity assumptions, voluntary lapse rates, mortality assumptions, asset investment yield rates, a description of all expense components, and plan and option mix assumptions. The memorandum shall also include the expected lifetime loss ratio and projections of yearly earned premiums, incurred claims, incurred claim loss ratios, and changes in contract reserves.

(2) An actuarial certification consisting of at least all of the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated.

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration.

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration.

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include all of the following:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held.

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience.

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted).

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if that statement cannot be made, a complete description of the situations in which this does not occur and the type and level of change in the reserve assumptions that would be

necessary for the difference to be sufficient. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subdivision (a) based on a standard age distribution.

(E) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(c) Premium rate schedules and new policy forms shall be filed by January 1, 2002, for all group long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, and for all previously approved individual long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, unless the January 1, 2002, deadline is extended by the commissioner. Insurers may continue to offer and market long-term care insurance policies approved prior to January 1, 2002, until the earlier of (1) 90 days after approval of both the premium rate schedules and new policy forms filed pursuant to this section or (2) January 1, 2003.

SEC. 7. Section 10236.12 is added to the Insurance Code, to read:

10236.12. All actuaries used by the commissioner to review rate applications submitted by insurers pursuant to this chapter, whether employed by the department or secured by contract, shall be members of the American Academy of Actuaries with at least five years' relevant experience in long-term care insurance industry pricing. If the department does not have actuaries with the experience required by this section, the commissioner shall contract with actuaries to review all rate applications submitted by insurers pursuant to this chapter. If the department has actuaries that have experience required by this section, but not enough of those experienced actuaries to perform the volume of work required by this chapter, the commissioner may contract with independent actuaries, as necessary.

If the commissioner contracts with independent actuaries, the commissioner shall promulgate regulations no later than January 1, 2002, to maintain the confidentiality of rate filings and proprietary insurer information and to avoid conflicts of interest.

SEC. 8. Section 10236.13 is added to the Insurance Code, to read:

10236.13. No insurer may increase the premium for an individual or group long-term care insurance policy or certificate approved for sale under this chapter unless the insurer has received prior approval for the increase from the commissioner.

The insurer shall submit to the commissioner for approval all proposed premium rate schedule increases, including at least all of the following information:

(a) Certification by an actuary, who is a member of the American Society of Actuaries and who is in good standing with that society, that:

(1) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated.

(2) The premium rate filing is in compliance with the provisions of this section.

(b) An actuarial memorandum justifying the rate schedule change request that includes all of the following:

(1) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase, and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale.

(A) Annual values for the five years preceding and the three years following the valuation date shall be provided separately.

(B) The projections shall include the development of the lifetime loss ratio.

(C) For policies issued with premium rate schedules approved under Section 10236.11, the projections shall demonstrate compliance with subdivision (a) of Section 10236.14. For all other policies, the projections shall demonstrate compliance with Section 10236.1.

(D) In the event the commissioner determines that a premium rate increase is justified due to changes in laws or regulations that are retroactively applicable to long-term care insurance previously sold in this state, then:

(i) The projected experience should be limited to the increases in claims expenses attributable to the changes in law or regulations.

(ii) In the event the commissioner determines that potential offsets to higher claims costs may exist, the insurer shall be required to use appropriate net projected experience.

(2) Disclosure of how reserves have been incorporated in this rate increase.

(3) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary.

(4) A statement that policy design, underwriting, and claims adjudication practices have been taken into consideration.

(5) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates.

(c) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner.

(d) Sufficient information for approval of the premium rate schedule increase by the commissioner.

(e) The provisions of this section are applicable to all individual and group policies issued in this state on or after July 1, 2002.

SEC. 9. Section 10236.14 is added to the Insurance Code, to read:

10236.14. Approval of all premium rate schedule increases shall be subject to the following requirements:

(a) Premium rate schedule increases shall demonstrate that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(1) The accumulated value of the initial earned premium times 58 percent.

(2) Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis.

(3) The present value of future projected initial earned premiums times 58 percent.

(4) Eighty-five percent of the present value of future projected premiums not in paragraph (3) on an earned basis.

(b) In the event the commissioner determines that a premium rate increase is justified due to changes in laws or regulations that are retroactively applicable to long-term care insurance previously sold in this state, a premium rate schedule increase may be approved if the increase provides that 70 percent of the present value of projected additional premiums shall be returned to policyholders in benefits and the other requirements applicable to other premium rate schedule increases are met.

(c) All present and accumulated values used to determine rate increases should use the maximum valuation interest rate for contract reserves. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(d) If the requested premium rate schedule increase on any new policy form approved under Section 10236.11 exceeds 15 percent or if the requested premium rate schedule increase on any policy form approved under Section 10236.11 plus all increases occurring after July 1, 2002,

in the premium rate schedule for the same policy form exceed 15 percent, no request for a rate increase on any policy form shall be approved by the commissioner except as follows: all the insurer's individual experience on long-term care policy forms issued in this state that have been approved pursuant to Section 10236.11 are pooled together to project future claims experience and the combined experience satisfies the requirements in subdivision (a). An insurer is not precluded from filing requests for premium rate schedule increases on all of its policy forms if the combined experiences after pooling all applicable policy forms satisfies the requirements of subdivision (a).

(e) No approval for an increase in the premium schedule shall be granted unless the actuary performing the review for the commissioner certifies that if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated. The certification may rely on supporting data in the filing.

(f) The provisions of this section are applicable to all individual and group policies issued in this state on or after July 1, 2002.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 10. Section 10236.14 is added to the Insurance Code, to read:

10236.14. Approval of all premium rate schedule increases shall be subject to the following requirements:

(a) Premium rate schedule increases shall demonstrate that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(1) The accumulated value of the initial earned premium times 58 percent.

(2) Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis.

(3) The present value of future projected initial earned premiums times 58 percent.

(4) Eighty-five percent of the present value of future projected premiums not in paragraph (3) on an earned basis.

(b) In the event the commissioner determines that a premium rate increase is justified due to changes in laws or regulations that are retroactively applicable to long-term care insurance previously sold in this state, a premium rate schedule increase may be approved if the increase provides that 70 percent of the present value of projected additional premiums shall be returned to policyholders in benefits and

the other requirements applicable to other premium rate schedule increases are met.

(c) All present and accumulated values used to determine rate increases should use the maximum valuation interest rate for contract reserves. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(d) No approval for an increase in the premium schedule shall be granted unless the actuary performing the review for the commissioner certifies that if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated. The certification may rely on supporting data in the filing.

(e) The provisions of this section are applicable to all policies issued in this state on or after July 1, 2002.

(f) This section shall become operative on January 1, 2008.

SEC. 11. Section 10236.15 is added to the Insurance Code, to read:

10236.15. Premium rate schedule increases that have been approved shall be subject to the following:

(a) For each rate increase that is implemented, the insurer shall file for approval by the commissioner updated projections, as defined in paragraph (1) of subdivision (b) of Section 10236.13, annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years.

(b) (1) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subdivision (a), the commissioner may require the insurer to implement any of the following:

(A) Premium rate schedule adjustments.

(B) Other measures to reduce the difference between the projected and actual experience.

(2) In determining whether the actual experience adequately matches the projected experience, consideration should be given to paragraph (5) of subdivision (b) of Section 10236.13, if applicable.

(c) If the commissioner demonstrates, based upon credible evidence, that an insurer has engaged in a persistent practice of filing inadequate premium schedules, the commissioner may, in addition to any other authority of the commissioner under this chapter, and after the insurer is afforded proper notice and due process, prohibit the insurer from filing and marketing comparable coverage for a period of up to five years or from offering all other similar coverages, and may limit marketing of

new applications to the products subject to recent premium rate schedule increases.

(d) This section shall not apply to life insurance policies and certificates that accelerate benefits for long-term care.

(e) The provisions of this section are applicable to all individual and group policies issued in this state on or after July 1, 2002.

CHAPTER 813

An act to add Chapter 4 (commencing with Section 2950) to Part 5 of Division 4 of the Probate Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to adult abuse.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Chapter 4 (commencing with Section 2950) is added to Part 5 of Division 4 of the Probate Code, to read:

CHAPTER 4. FINANCIAL ABUSE OF MENTALLY IMPAIRED ELDERS

Article 1. General

2950. (a) It is the intent of the Legislature to do all of the following:

(1) Reduce the incidence of financial abuse perpetrated against mentally impaired elder adults.

(2) Minimize monetary losses to mentally impaired elder adults as a result of financial abuse.

(3) Facilitate timely intervention by law enforcement, in collaboration with the public guardian, to effectively protect mentally impaired elder adult victims of financial abuse, and to recover their assets.

(b) Any peace officer or public guardian of a county that has both of the following, as determined by the public guardian of that county, may take the actions authorized by this chapter:

(1) The existence of sufficient law enforcement personnel with expertise in the assessment of competence.

(2) The existence of a law enforcement unit devoted to investigating elder financial abuse and the enforcement of laws applicable to elder abuse.

(c) This chapter shall be coordinated with existing mandated programs affecting financial abuse of mentally impaired elders that are administered by the adult protective services agency of the county.

2951. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise.

(a) ''Declaration'' means a document that substantially complies with the requirements of Section 2954, and is signed by both a peace officer and a supervisor from the county's adult protective services agency and provided to the public guardian in accordance with subdivision (b) of Section 2952.

(b) ''Elder person'' means any person residing in this state, 65 years of age or older.

(c) ''Financial abuse'' means a situation described in Section 15610.30 of the Welfare and Institutions Code.

(d) ''Financial abuse POST training'' means an elder financial abuse training course certified by the Commission on Peace Officer Standards and Training.

(e) ''Financial institution'' means any bank, savings and loan, thrift, industrial loan company, credit union, or any branch of any of these institutions doing business in the state, as defined by provisions of the Financial Code.

(f) ''Peace officer'' means a sheriff, deputy sheriff, municipal police officer, or a peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, duly sworn under the requirements of state law, who satisfies any of the following requirements:

(1) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code has completed or participated as a lecturer in a financial abuse POST training program within the last 36 months. The completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, address relevant elder abuse laws, recognition of financial abuse and fraud, assessment of mental competence in accordance with the standards set forth in Part 17 (commencing with Section 810) of the Probate Code, reporting requirements and procedures for the investigation of financial abuse and related crimes, including neglect, and civil and criminal procedures for the protection of victims. The course may be presented as part of a training program that includes other subjects or courses.

(2) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, has consulted with a sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, who satisfies the requirements of paragraph (1) concerning the declaration defined in subdivision (a) and obtained the

signature of that sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code on a declaration that substantially complies with the form described in Section 2954.

(g) ''Property'' means all personal property and real property of every kind belonging to, or alleged to belong to, the elder.

Article 2. Estate Protection

2952. (a) A peace officer may issue a declaration, as provided in Section 2954, concerning an elder person if all of the following conditions are satisfied:

(1) There is probable cause to believe that the elder person is substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(2) There exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the elder person.

(3) There is probable cause to believe that a crime is being committed against the elder person.

(4) The crime is connected to the inability of the elder person to manage his or her financial resources or to resist fraud or undue influence, and that inability is the result of deficits in the elder person's mental functions.

(5) The peace officer has consulted with an individual qualified to perform a mental status examination.

(b) If the requirements of subdivision (a) are satisfied, the peace officer may provide a signed declaration to the public guardian of the county. The declaration provided by the peace officer under this subdivision shall be signed by both the peace officer and a supervisor from the county's adult protective services agency. The declaration shall be transmitted to the public guardian within 24 hours of its being signed, and may be transmitted by facsimile.

(c) (1) Upon receiving a signed declaration from a peace officer, the public guardian is authorized to rely on the information contained in the declaration to take immediate possession or control of the property of the elder person referred to in the declaration, and may issue a written recordable certification of that fact as provided for in Section 2901.

(2) The mere issuance of the declaration provided by this section shall not require the public guardian to take possession or control of property and shall not require the public guardian to make a determination that the requirements for the appointment of a conservator are satisfied.

(3) A public guardian acting in good faith is not liable when taking possession or control of property pursuant to this section.

(d) (1) If the public guardian takes possession of an elder person's property pursuant to this section, the public guardian shall attempt to find agents pursuant to the use of durable powers of attorney or successor trustees nominated in trust instruments, or other persons having legal authority under existing legal instruments, to manage the elder person's estate.

(2) If the public guardian is unable to find any appropriate person to manage the elder person's estate pursuant to paragraph (1), the public guardian shall attempt to find family members willing to manage the elder person's estate. If no documents exist appointing fiduciaries, the public guardian shall follow the priorities set forth in Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(3) The public guardian shall take the steps described in paragraphs (1) and (2) within 15 days of taking possession of an elder person's property pursuant to this section.

2953. (a) (1) A public guardian who has taken possession or control of the property of an elder person pursuant to this chapter is entitled to petition a court of competent jurisdiction for the reasonable costs incurred by the public guardian for the protection of the person or the property, together with reasonable fees for services, including, but not limited to, reasonable attorneys' fees. These fees shall be payable from the estate of the elder person if the person is not deemed competent by the court and if any of the following apply:

(A) The public guardian or someone else is appointed as the temporary or general conservator of the estate.

(B) An attorney-in-fact, under a durable power of attorney, or a trustee, takes steps, or is notified of the need to take steps, to protect the estate of the elder person.

(C) An action is brought against the alleged financial abuser by the elder person, his or her conservator, a trustee, a fiduciary, or a successor in interest of the elder person, arising from a harm that the public guardian taking charge was intended to prevent or minimize.

(2) Any costs incurred by the public guardian pursuant to paragraph (1) shall be compensable as provided in Section 2902. Fees collected by the public guardian pursuant to this chapter shall be used for the activities described in this chapter.

(b) When a public guardian has taken possession or control of the property of an elder person pursuant to this chapter, the public guardian shall exercise reasonable care to ensure that the reasonable living expenses and legitimate debts of the elder person are addressed as well as is practical under the circumstances.

(c) Any person identified as a victim in a declaration described in Section 2954 may bring an ex parte petition in the superior court for an

order quashing the certification issued by the public guardian as provided in subdivision (c) of Section 2952.

(1) Upon request by the petitioner, the court may defer filing fees related to the petition, and order the public guardian to authorize the release of funds from a financial institution to reimburse the petitioner the filing fees from assets belonging to the petitioner, but shall waive filing fees if the petitioner meets the standards of eligibility established by subparagraph (A) or (B) of paragraph (6) of subdivision (a) of Section 68511.3 of the Government Code for the waiver of a filing fee.

(2) The court shall quash the certification if the court determines that there is insufficient evidence to justify the imposition on the alleged victim's civil liberties caused by the certification.

(3) If the court determines that there is sufficient evidence to justify the imposition on the alleged victim's civil liberties caused by the certification, the court may, in its discretion, do one or more of the following:

(A) Order disbursements from the alleged victim's assets, as are reasonably needed to address the alleged victim's needs.

(B) Appoint a temporary conservator of the alleged victim's estate, where the facts before the court would be sufficient for the appointment of a temporary conservator under Section 2250.

(C) Deny the petition.

(D) Award reasonable attorney's fees to respondent's attorney from the victim's estate.

(d) The public guardian shall serve or cause to be served a copy of the certification issued pursuant to Section 2952 on the victim by mail within 24 hours of the execution of the certification, or as soon thereafter as is practical, in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

2954. A declaration issued by a peace officer under this chapter shall not be valid unless it substantially complies with the following form:

DECLARATION

PRINT OR TYPE

1. My name is: _____.
   My badge number is: _____.
   My office address and telephone number are:
   _____
   _____
   _____.
2. I am a duly sworn peace officer presently employed by _____
   _____, in the County of
   _____, in the State of California.

3. On __ (date) I personally interviewed ____ (victim) at ____ a.m./p.m. at _____ (address). The victim resides at _____ (address, telephone number, and name of facility, if applicable).
4. There is probable cause to believe that:
(a) _____ (Victim) is substantially unable to manage his or her financial resources or to resist fraud or undue influence, and
(b) There exists a significant danger the victim will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the victim, and
(c) There is probable cause to believe that a crime is being committed against the victim, and
(d) The crime is connected to the victim's inability to manage his or her financial resources or to resist fraud or undue influence, and
(e) The victim suffers from that inability as a result of deficits in one or more of the following mental functions:

INSTRUCTIONS TO PEACE OFFICER: CHECK ALL BLOCKS THAT APPLY:

[A] ALERTNESS AND ATTENTION

☐ 1. Levels of arousal. (Lethargic, responds only to vigorous and persistent stimulation, stupor.)

☐ 2. Orientation. Person ___ Time ____ (day, date, month, season, year), Place ____ (address, town, state), Situation _____ (why am I here?).

☐ 3. Ability to attend and concentrate. (Give detailed answers from memory, mental ability required to thread a needle.)

[B] INFORMATION PROCESSING

Ability to:

☐ 1. Remember, i.e., short– and long–term memory, immediate recall. (Deficits reflected by: forgets question before answering, cannot recall names, relatives, past presidents, events of past 24 hours.)

☐ 2. Understand and communicate either verbally or otherwise. (Deficits reflected by: inability to comprehend questions, follow instructions, use words correctly or name objects; nonsense words.)

☐ 3. Recognize familiar objects and persons. (Deficits reflected by: inability to recognize familiar faces, objects, etc.)

☐ 4. Understand and appreciate quantities. (Perform simple calculations.)

☐ 5. Reason using abstract concepts. (Grasp abstract aspects of his or her situation; interpret idiomatic expressions or proverbs.)

☐ 6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self–interest. (Break complex tasks down into simple steps and carry them out.)

☐ 7. Reason logically.

[C] THOUGHT DISORDERS

☐ 1. Severely disorganized thinking. (Rambling, nonsensical, incoherent, or nonlinear thinking.)

☐ 2. Hallucinations. (Auditory, visual, olfactory.)

☐ 3. Delusions. (Demonstrably false belief maintained without or against reason or evidence.)

☐ 4. Uncontrollable or intrusive thoughts. (Unwanted compulsive thoughts, compulsive behavior.)

[D] ABILITY TO MODULATE MOOD AND AFFECT

Pervasive and persistent or recurrent emotional state which appears severely inappropriate in degree to the patient's circumstances. Encircle the inappropriate mood(s):

Anger	Euphoria	Helplessness
Anxiety	Depression	Apathy
Fear	Hopelessness	Indifference
Panic	Despair	

5. The property at risk is identified as, but not limited to, the following:

Bank account located at: _____
(name, telephone number, and address of the bank branch)

Account number(s): _____

Securities/other funds located at: _____
(name, telephone number, and address of financial institution)

Account number(s): _____

Real property located at: _____
(address)

Automobile described as: _____

(make, model/color)

_____

(license plate number and state)

Other property described as: _____

Other property located at: _____

6. A criminal investigation will ☐ will not ☐ be commenced against:

_____

(name, address, and telephone number)

for alleged financial abuse.

BLOCKS 1, 2, AND 3 MUST BE CHECKED IN ORDER FOR THIS DECLARATION TO BE VALID:

☐ 1. I am a peace officer in the county identified above.

☐ 2. I have consulted concerning this case with a supervisor in the county's adult protective services agency who has signed below, indicating that he or she concurs that, based on the information I provided to him or her, or based on information he or she obtained independently, this declaration is warranted under the circumstances.

☐ 3. I have consulted concerning this case with an individual qualified to perform a mental status examination.

_____

Signature of Declarant Peace Officer

_____

Date

_____

Signature of Concurring Adult Protective Services Supervisor

2955. Nothing in this chapter shall prohibit or restrict a public guardian from undertaking any other proceeding authorized by law.

SEC. 2. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) ''Financial abuse'' means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent

adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64 years) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64 years.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the third party, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term ''third party'' means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

(c) For the purposes of this section, the term ''representative'' means an elder or dependent adult's conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.

SEC. 3. If both this bill and AB 2107 are enacted and both bills amend Section 15610.30 of the Welfare and Institutions Code, the amendment to Section 15610.30 made by AB 2107 shall prevail over the amendment to that section made by this act, whether AB 2107 is enacted prior to, or subsequent to, the enactment of this act.

SEC. 4. 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 814

An act to add Section 4341.1 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

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

(a) There is a growing shortage of mental health professionals, and there is a need for more qualified mental health professionals throughout California.

(b) Public mental health programs have difficulty recruiting and retaining high quality staff for rural areas or large populations of low-income and linguistic minority families.

(c) The rising costs of higher education, coupled with a shift in available financial aid from scholarships and grants to loans, make loan repayment options an important consideration in a student's decision to pursue a postsecondary education.

(d) The availability of financial aid and loan repayment assistance are important considerations for many students, especially economically disadvantaged students, in making their educational decisions.

SEC. 2. Section 4341.1 is added to the Welfare and Institutions Code, to read:

4341.1. (a) The task force funded by Schedule (a) of Item 4440-001-0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000) to address and identify options for meeting the staffing needs of state and county health, human services, and criminal justice agencies shall include a representative from the State Department of Mental Health, who shall serve as chair, the Secretary of the Health and Human Services Agency or his or her designee, a representative of the Youth and Adult Correctional Agency, the Secretary for Education or his or her designee, a representative of the California Mental Health Planning Council, and representatives of the University of California, including the University of California medical schools and medical residency training programs, the California State University, the California Community Colleges, the California School Boards Association, the Association of California School Administrators, the Medical Board of

California, the Board of Behavioral Sciences, the Board of Psychology, the California Mental Health Directors Association, the California Council of Community Mental Health Agencies, the National Alliance for the Mentally Ill-California, the California Network of Mental Health Clients, the United Advocates for Children of California, and the California Alliance of Child and Family Services. The State Department of Mental Health shall provide staff to the task force.

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

(1) Study the shortage of mental health workers in publicly funded mental health services and develop recommendations for expansion of all of the following:

(A) Programs such as the Human Services Academy currently established by the Mental Health Association of Los Angeles and the Los Angeles Unified School District to offer high school students education about mental health problems, services, and information about the meaning and value to society of service in publicly funded mental health care.

(B) Programs that expand graduate school programs.

(C) Ways to expand the utilization of those who have been consumers of mental health services.

(D) Ways to engage community college students, four-year college undergraduates, and college graduates in careers leading to mental health service.

(E) Efforts to change the curriculum of programs, undergraduate, graduate, and postgraduate, including medical residency programs, that could lead to employment in public mental health programs to make sure there is clinical training and education that complements and supports employment in public mental health programs.

(F) Revisions, as may be necessary, to licensing requirements including recommendations for proposed legislation, and scope of practice issues that maximize the opportunity to utilize consumers and are consistent with the types of services likely to be required to serve seriously emotionally disturbed children and severely mentally ill adults who need a wide array of services as set forth in the children's and adults' systems of care.

(G) Financial supports in the form of stipends, loan forgiveness, or other programs that could be accomplished through state or federal funds that would further support the need for employment.

(2) Annually quantify the need for different types of providers in different regions of the state including the cost, positions, and projected future needs.

(3) Evaluate the impact of competition from the private sector on the availability of mental health professionals in the public sector.

(4) Address other issues of collaboration and coordination between the educational system, the licensing boards, and the mental health system that are impeding progress in expanding the mental health workforce.

(5) Address issues of collaboration and coordination within the various levels of the educational system that are impeding progress in expanding the mental health workforce.

(6) Develop recommendations to ensure all of the following:

(A) Two-year and four-year colleges have sufficient capacity to train all the mental health staff needed.

(B) Issues that obstruct development of a career ladder between two-year and four-year schools are eliminated.

(C) Community college programs have clear delineation of both skills and theory that need to be mastered for each type of position.

(D) There are new certificate programs for psychosocial rehabilitation at the community college level and post baccalaureate case management.

(7) Examine options for collaboration on curriculum between employees in the public mental health system, and high schools, community colleges, and undergraduate and graduate education programs.

(c) The task force shall issue a progress report to the Legislature on its findings on or before May 1, 2001, and shall issue a final report to the Legislature on or before May 1, 2002.

CHAPTER 815

An act to add Section 11877.2 to, and to add Chapter 9.8 (commencing with Section 11545) to Division 10 of, the Health and Safety Code, and to add Section 1000.8 to the Penal Code, relating to addiction.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Chapter 9.8 (commencing with Section 11545) is added to Division 10 of the Health and Safety Code, to read:

CHAPTER 9.8. TREATMENT

11545. The Legislature hereby finds and declares that licensed physicians, experienced in the treatment of addiction, should be allowed and encouraged to treat addiction by all appropriate means.

SEC. 2. Section 11877.2 is added to the Health and Safety Code, to read:

11877.2. (a) The department shall establish a program for the operation and regulation of office-based opiate treatment programs. An office-based opiate treatment program established pursuant to this section shall meet either of the following conditions:

(1) Hold a primary narcotics treatment program license.

(2) Be affiliated and associated with a primary licensed narcotics treatment program. An office-based opiate treatment program meeting the requirement of this paragraph shall not be required to have a separate license from the primary licensed narcotics treatment program with which it is affiliated and associated.

(b) For purposes of this section, ''office-based opiate treatment program'' means a program in which interested and knowledgeable physicians provide addiction treatment services, and in which community pharmacies supply necessary medication both to these physicians for distribution to patients and through direct administration and specified dispensing services. Nothing in this section is intended to expand the scope of the practice of pharmacy.

(c) Notwithstanding any other provision of law or regulation, including Section 10020 of Title 9 of the California Code of Regulations, an office-based opiate treatment program in a remote site, that is affiliated and associated with a licensed narcotics treatment program, may be approved by the department, if all of the following conditions are met:

(1) A physician may provide office-based addiction services only if each office-based patient is registered as a patient in the licensed narcotic treatment program and both the licensed narcotic treatment program and the office-based opiate treatment program ensure that all services required under Chapter 4 (commencing with Section 10000) of Division 4 of Title 9 of the California Code of Regulations for the management of opiate addiction are provided to all patients treated in the remote site.

(2) A physician in an office-based opiate treatment program may provide treatment for a maximum of 20 patients under the appropriate United States Drug Enforcement Administration registration. The primary licensed narcotics treatment program shall be limited to its total licensed capacity as established by the department, including the patients of physicians in the office-based opiate treatment program.

(3) The physicians in the office-based opiate treatment program shall dispense or administer pharmacologic treatment for opiate addiction that has been approved by the federal Food and Drug Administration such as levoalphacetylmethadol (LAAM) or methadone.

(4) Office-based opiate treatment programs, in conjunction with primary licensed narcotics treatment programs, shall develop protocols to prevent the diversion of methadone. The department may develop regulations to prevent the diversion of methadone.

(d) For purposes of this section, ''remote site'' means a site that is geographically or physically isolated from any licensed narcotic treatment program. Therefore, the requirements in this subdivision regarding a remote site do not apply to an office-based opiate treatment program that holds a primary narcotics treatment license.

(e) In considering an office-based opiate treatment program application, the department shall independently weigh the treatment needs and concerns of the county, city, or areas to be served by the program.

SEC. 3. Section 1000.8 is added to the Penal Code, to read:

1000.8. (a) Where a person is participating in a deferred entry of judgment program or a preguilty plea program pursuant to this chapter, the person may also participate in a licensed methadone or levoalphacetylmethadol (LAAM) program if the following conditions are met:

(1) The sheriff allows a methadone program to operate in the county jail.

(2) The participant allows release of his or her medical records to the court presiding over the participant's preguilty or deferred entry program for the limited purpose of determining whether or not the participant is duly enrolled in the licensed methadone or LAAM program and is in compliance with deferred entry or preguilty plea program rules.

(b) If the conditions specified in paragraphs (1) and (2) of subdivision (a) are met, participation in a methadone or LAAM treatment program shall not be the sole reason for exclusion from a deferred entry or preguilty plea program. A methadone or LAAM patient who participates in a preguilty or deferred entry program shall comply with all court program rules.

(c) A person who is participating in a deferred entry of judgment program or preguilty plea program pursuant to this chapter who participates in a licensed methadone or LAAM program shall present to the court a declaration from the director of the methadone or LAAM program, or the director's authorized representative, that the person is currently enrolled and in good standing in the program.

(d) Urinalysis results that only establish that a person described in this section has ingested or taken the methadone administered or prescribed

by a licensed methadone or LAAM program shall not be considered a violation of the terms of the deferred entry of judgment or preguilty plea program under this chapter.

(e) Except as provided in subdivisions (a) to (d), inclusive, this section shall not be interpreted to amend any provisions governing deferred entry and diversion programs.

CHAPTER 816

An act to add Chapter 2.05 (commencing with Section 1339.63) to Division 2 of the Health and Safety Code, relating to health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Chapter 2.05 (commencing with Section 1339.63) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.05. MINIMIZATION OF MEDICATION-RELATED ERRORS

1339.63. (a) (1) As a condition of licensure under this division, every general acute care hospital, as defined in subdivision (a) of Section 1250, special hospital, as defined in subdivision (f) of Section 1250, and surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, shall adopt a formal plan to eliminate or substantially reduce medication-related errors. With the exception of small and rural hospitals, as defined in Section 124840, this plan shall include technology implementation, such as, but not limited to, computerized physician order entry or other technology that, based upon independent, expert scientific advice and data, has been shown effective in eliminating or substantially reducing medication-related errors.

(2) Each facility's plan shall be provided to the State Department of Health Services no later than January 1, 2002. Within 90 days after submitting a plan, the department shall either approve the plan, or return it to the facility with comments and suggestions for improvement. The facility shall revise and resubmit the plan within 90 days after receiving it from the department. The department shall provide final written approval within 90 days after resubmission, but in no event later than January 1, 2003. The plan shall be implemented on or before January 1, 2005.

(b) Any of the following facilities that is in the process of constructing a new structure or retrofitting an existing structure for the purposes of complying with seismic safety requirements shall be exempt from implementing a plan by January 1, 2005:

(1) General acute care hospitals, as defined in subdivision (a) of Section 1250.

(2) Special hospitals, as defined in subdivision (f) of Section 1250.

(3) Surgical clinics, as defined in paragraph (1) of subdivision (b) of Section 1204.

(c) The implementation date for facilities that are in the process of constructing a new structure or retrofitting an existing structure shall be six months after the date of completion of all retrofitting or new construction. The exemption and new implementation date specified in this paragraph shall apply to those facilities that have construction plans and financing for these projects in place no later than July 1, 2002.

(d) For purposes of this chapter, a ''medication-related error'' means any preventable medication-related event that adversely affects a patient in a facility listed in subdivision (a), and that is related to professional practice, or health care products, procedures, and systems, including, but not limited to, prescribing, prescription order communications, product labeling, packaging and nomenclature, compounding, dispensing, distribution, administration, education, monitoring, and use.

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 817

An act to amend Section 1569.72 of, and to add Sections 1566.45 and 1568.0832 to, the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1566.45 is added to the Health and Safety Code, immediately following Section 1566.4, to read:

1566.45. (a) (1) For purposes of this section, ''bedridden'' means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

(2) In developing the regulations for child residential facilities, the department shall take into consideration the size and weight of the child.

(3) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(4) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions are met:

(1) The fire safety requirements are met.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 2. Section 1568.0832 is added to the Health and Safety Code, immediately following Section 1568.0831, to read:

1568.0832. (a) (1) For purposes of this section, ''bedridden'' means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

(2) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(3) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions are met:

(1) The fire safety requirements are met.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services,

shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer clients, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 3. Section 1569.72 of the Health and Safety Code is amended to read:

1569.72. (a) Except as otherwise provided in subdivision (d), no resident shall be admitted or retained in a residential care facility for the elderly if any of the following apply:

(1) The resident requires 24-hour, skilled nursing or intermediate care.

(2) The resident is bedridden, other than for a temporary illness or for recovery from surgery.

(b) (1) For the purposes of this section, ''bedridden'' means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with

appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

(2) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(c) Notwithstanding paragraph (2) of subdivision (a), bedridden persons may be admitted to, and remain in, residential care facilities for the elderly that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions are met:

(1) The fire safety requirements are met.

(2) Alternative methods of protection are approved.

(d) (1) For purposes of this section, ''temporary illness'' means any illness which persists for 14 days or less.

(e) A bedridden resident may be retained in a residential care facility for the elderly in excess of 14 days if all of the following requirements are satisfied:

(1) The facility notifies the department in writing regarding the temporary illness or recovery from surgery.

(2) The facility submits to the department, with the notification, a physician and surgeon's written statement to the effect that the resident's illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery will end or upon which the resident will no longer be confined to a bed.

(3) The department determines that the health and safety of the resident is adequately protected in that facility and that transfer to a higher level of care is not necessary.

(4) This section does not expand the scope of care and supervision of a residential care facility for the elderly.

(f) Notwithstanding the length of stay of a bedridden resident, every facility admitting or retaining a bedridden resident, as defined in this section, shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(g) Nothing in this section shall be used for purposes of Section 1569.70 to determine the appropriateness of residents being admitted or retained in a residential care facility for the elderly on the basis of health related conditions and the need for these services until the three levels

of care set forth in Section 1569.70 are fully implemented. This section shall not prohibit the Community Care Licensing Division of the State Department of Social Services from continuing to implement the regulations of Article 8 (commencing with Section 87700) of Chapter 8 of Division 6 of Title 22 of the California Code of Regulations, as promulgated and approved on February 13, 1990.

(h) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivisions (a) to (f), inclusive.

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) (i) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection.

(ii) Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45 days following the request.

(i) For facilities that care for six or fewer clients, a local fire official may not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(j) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 4. It is the intent of the Legislature that the regulations required by this act permit persons currently residing in community care facilities under fire clearances in existence on the effective date of this act to remain in the licensed facility provided that the facility can safely care for the resident.

SEC. 5. The State Department of Social Services and the State Fire Marshal may adopt emergency regulations to implement Sections 1566.45, 1568.0832, and 1569.88 of the Health and Safety Code 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 emergency regulations pursuant to this section shall be deemed an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

CHAPTER 818

An act to add and repeal Article 12 (commencing with Section 18831) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Article 12 (commencing with Section 18831) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 12. California Lung Disease and Asthma Research Fund

18831. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Lung Disease and Asthma Research Fund, which is established by Section 18832. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the ''California Lung Disease and Asthma Research Fund'' to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for lung disease and asthma research.

(f) Notwithstanding any other provision, a voluntary contribution designation for the California Lung Disease and Asthma Research Fund shall not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18832. There is in the State Treasury the California Lung Disease and Asthma Research Fund to receive contributions made pursuant to Section 18831. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18831 to be transferred to the California Lung Disease and Asthma Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Lung Disease and Asthma Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18831 for payment into that fund.

18833. All money transferred to the California Lung Disease and Asthma Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services for allocation to the American Lung Association of California to provide medical research grants to develop and advance the understanding, causes, techniques, and modalities effective in the prevention, care, treatment, and cure of lung disease.

The lung diseases and research areas shall include, but not be limited to, the following:

(1) Asthma.

(2) Health effects of air pollution.

(3) Tuberculosis.

(4) Chronic obstructive pulmonary disease.

(5) Emphysema.

Funds may not be used for the department's administrative costs.

18834. It is the intent of the Legislature that this article create an additional funding source for lung disease and asthma research and shall be used to supplement, not supplant, other funding sources for this research.

18835. (a) This article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the California Lung Disease and Asthma Research Fund on the tax return , and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in any calendar year after the first taxable year the California Lung Disease and Asthma Research Fund appears on the tax return, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the second calendar year the California Lung Disease and Asthma Research Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

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CHAPTER 819

An act to amend Sections 1520, 1522, 1522.04, 1568.0821, 1568.09, 1569.17, 1596.66, and 1596.871 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1520 of the Health and Safety Code is amended to read:

1520. Any person desiring issuance of a license for a community care facility or a special permit for specialized services under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the department.

(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1522, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the community care facility for which application for issuance of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer, or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any community care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (d).

(f) A signed statement that the person desiring issuance of a license or special permit has read and understood the community care facility

licensure statute and regulations that pertain to the applicant's category of licensure.

(g) Any other information that may be required by the department for the proper administration and enforcement of this chapter.

(h) In implementing this section, the department shall give due consideration to the functions of each separate licensing category.

(i) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

SEC. 2. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home 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) (1) 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.

(2) The 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.

(3) 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.

(4) The following shall apply to the criminal record information:

(A) 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).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) 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.

(D) 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).

(E) 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 any other 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) (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 client, residing in the facility.

(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 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.

(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 like 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 the requirements applicable under paragraph (1).

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or 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 licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensee who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, foster parent, or both are also present.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision 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.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(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 or sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and 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 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, 273d, 273g, or 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 regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (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, 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.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) 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.

(4) 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 may 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.

(5) 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.

(6) (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 family 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.

(7) 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).

(8) 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 any of the following offenses:

(A) (i) 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 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.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee 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.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 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 record 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 facility licensed by a 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. 3. Section 1522.04 of the Health and Safety Code is amended to read:

1522.04. (a) The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, or a residential care facility, child day care facility, or foster family agency, licensed by the department pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), or certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice, for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII) to be used for applicant fingerprints. Therefore, when live-scan technology is operational, individuals shall be required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services, before their initial presence in a community care facility. The regulations shall also

cover the submission of fingerprint information to the Federal Bureau of Investigation.

(b) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the criminal history information required pursuant to subdivision (a) of Section 1522.04. If the Department of Justice cannot ascertain the information required pursuant to that subdivision within three working days, the Department of Justice shall notify the State Department of Social Services, or county licensing agencies, either by telephone and by subsequent confirmation in writing by first-class mail, or by electronic or facsimile transmission. At its discretion, the Department of Justice may forward one copy of the fingerprint cards to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the fingerprinted individual.

(c) For purposes of this section, live-scan technology is operational when the Department of Justice and the district offices of the Community Care Licensing Division of the department live-scan sites are operational and the department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information from the Department of Justice within three business days.

SEC. 4. Section 1568.0821 of the Health and Safety Code is amended to read:

1568.0821. (a) Notwithstanding any other provision of this chapter, any person who violates Section 1568.03 shall be assessed by the department an immediate civil penalty in the amount of one hundred dollars ($100) per resident for each day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be two hundred dollars ($200) per resident for each day of the violation if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the license application is denied and the operator continues to operate the unlicensed facility.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

SEC. 5. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data

by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature, in enacting this section, to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The 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.

(3) The following shall apply to the criminal record information:

(A) 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).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) 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.

(D) 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).

(E) An applicant and any other person specified in subdivision (b) shall submit to the Department of Justice a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue

a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.82. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.82.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints, for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) (A) Paragraph (1) shall cease to be implemented when the State Department of Social Services adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when those regulations become final.

(B) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this

subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's

employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption

for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) 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 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.

(B) A felony offense specified in Section 729 of the Business and Professional Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record 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 facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement

contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 6. 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) (1) 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 not been exonerated.

(2) The 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.

(3) The following shall apply to the criminal record information:

(A) 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).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) 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.

(D) 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).

(E) 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 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, relative, 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) Any person similar to those described in this subdivision, as defined by the department in regulations.

(I) 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, or sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice and submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The 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, 273d, 273g, or 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 any of the following offenses:

(A) 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 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.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) 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.

(3) 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 record 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 facility licensed by a 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 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 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 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. 7. Section 1596.66 of the Health and Safety Code is amended to read:

1596.66. (a) Each license-exempt child care provider, as defined pursuant to Section 1596.60, who is compensated, in whole or in part, with funds provided pursuant to the Alternative Payment Program, Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code or pursuant to the federal Child Care and Development Block Grant Program, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 1596.603 and 1596.605 in order to be eligible to receive this compensation. Registration under this chapter shall be required for providers who receive funds under Section 9858 and following of Title 42 of the United States Code only to the extent permitted by that law and the regulations adopted pursuant thereto. Registration under this chapter shall be required for providers who receive funds under the federal Child Care and Development Block Grant Program only to the extent permitted by that program and the regulations adopted pursuant thereto.

(b) For the purposes of registration of the providers identified in subdivision (a), the following procedures shall apply:

(1) Notwithstanding subdivision (a) of Section 1596.603, the provider shall submit the fingerprints and trustline application to the local child care resource and referral agency established pursuant to Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code. The local child care resource and referral agency shall transmit the fingerprints and completed trustline applications to the

department and address any local problems that occur in the registration system. If a fee is charged by the local child care resource and referral agency that takes a provider's fingerprints, the provider shall be reimbursed for this charge by the State Department of Education, through the local child care resource and referral agency, from federal Child Care and Development Block Grant funds to the extent that those funds are available.

(2) The department shall adhere to the requirements of Sections 1596.603, 1596.605, 1596.606, and 1596.607 and shall notify the California Child Care Resource and Referral Network of any action it takes pursuant to Sections 1596.605, 1596.606, and 1596.607.

(3) The California Child Care Resource and Referral Network shall notify the applicable local child care resource and referral agencies, alternative payment programs, and county welfare departments of the status of the trustline applicants and registered trustline child care providers. The network shall maintain a toll-free telephone line to provide information to the local resource and referral agencies, the alternative payment programs, and the child care recipients of the status of providers.

(c) This section shall become operative only if funds appropriated for the purposes of this article from Item 6110-196-890 of Section 2 of the Budget Act of 1991 are incorporated into and approved as part of the state plan that is required pursuant to Section 658(E)(a) of the federal Child Care Block Grant Act of 1990 (Sec. 5082, P.L. 101-508).

SEC. 8. 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) (1) 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.

(2) The 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.

(3) 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.

(4) The following shall apply to the criminal record information:

(A) 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).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) 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.

(D) 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).

(E) 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 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.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(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 record 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, 273d, 273g, or 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 any of the following offenses:

(A) 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 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.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 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 record 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 facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a

California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record 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. 9. The State Department of Social Services may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement the changes made to Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code by this act. The adoption of regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

CHAPTER 820

An act to amend Sections 1770, 1771, 1771.2, 1772, 1773, 1774, 1775, 1776.6, 1777, 1777.2, 1777.4, 1779, 1779.2, 1779.4, 1779.6, 1779.8, 1779.10, 1780, 1780.2, 1780.4, 1781, 1781.2, 1781.4, 1781.6, 1781.8, 1781.10, 1782, 1783, 1783.2, 1784, 1785, 1786, 1786.2, 1787, 1788, 1788.2, 1788.4, 1789, 1789.2, 1789.4, 1789.6, 1789.8, 1793.5, 1793.6, 1793.7, 1793.8, 1793.9, 1793.11, 1793.13, 1793.15, 1793.17, 1793.19, 1793.21, 1793.23, 1793.25, 1793.27, 1793.29, 1793.50, 1793.56, 1793.58, 1793.60, and 1793.62 of, to amend and renumber Sections 1771.9 and 1771.11 of, to add Sections 1771.3, 1772.2, 1779.7, 1783.3, 1789.1, 1792.1, 1792.3, 1792.4, 1792.5, and 1792.6 to, to add Article 6.5 (commencing with Section 1792.11) of Chapter 10 of Division 2 of, to repeal Section 1771.8 of, and to repeal and add Sections 1771.4, 1771.5, 1771.6, 1771.7, 1792, and 1792.2 of, the Health and

Safety Code, relating to continuing care contracts, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1770 of the Health and Safety Code is amended to read:

1770. The Legislature finds, declares, and intends all of the following:

(a) Continuing care retirement communities are an alternative for the long-term residential, social, and health care needs of California's elderly residents and seek to provide a continuum of care, minimize transfer trauma, and allow services to be provided in an appropriately licensed setting.

(b) Because elderly residents often both expend a significant portion of their savings in order to purchase care in a continuing care retirement community and expect to receive care at their continuing care retirement community for the rest of their lives, tragic consequences can result if a continuing care provider becomes insolvent or unable to provide responsible care.

(c) There is a need for disclosure concerning the terms of agreements made between prospective residents and the continuing care provider, and concerning the operations of the continuing care retirement community.

(d) Providers of continuing care should be required to obtain a certificate of authority to enter into continuing care contracts and should be monitored and regulated by the State Department of Social Services.

(e) This chapter applies equally to for-profit and nonprofit provider entities.

(f) This chapter states the minimum requirements to be imposed upon any entity offering or providing continuing care.

(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of any continuing care contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

SEC. 2. 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) ''Affiliate'' means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association, or other legal entity that directly or indirectly controls, is controlled by, or is under common control with, a provider or applicant.

(2) ''Affinity group'' means a grouping of entities sharing a common interest, philosophy, or connection (e.g., military officers, religion).

(3) ''Annual report'' means the report each provider is required to file annually with the department, as described in Section 1790.

(4) ''Applicant'' means any entity, or combination of entities, that submits and has pending an application to the department for a permit to accept deposits and a certificate of authority.

(5) ''Assisted living services'' includes, but is not limited to, 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.

(6) ''Assisted living unit'' means the living area or unit within a continuing care retirement community that is specifically designed to provide ongoing assisted living services.

(7) ''Audited financial statement'' means financial statements prepared in accordance with generally accepted accounting principles including the opinion of an independent certified public accountant, and notes to the financial statements considered customary or necessary to provide full disclosure and complete information regarding the provider's financial statements, financial condition, and operation.

(b) (reserved)

(c) (1) ''Cancel'' means to destroy the force and effect of an agreement or continuing care contract.

(2) ''Cancellation period'' means the 90-day period, beginning when the resident physically moves into the continuing care retirement community, during which the resident may cancel the continuing care contract, as provided in Section 1788.2.

(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.

(5) ''Certificate'' or ''certificate of authority'' means the certificate issued by the department, properly executed and bearing the State Seal, authorizing 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, specific action, or other requirement imposed by the department for the initial or continuing validity of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority. A condition may limit the

circumstances under which the provider may enter into any new deposit agreement or contract, or may be imposed as a condition precedent to the issuance of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority.

(7) ''Consideration'' means some right, interest, profit, or benefit paid, transferred, promised, or provided by one party to another as an inducement to contract. Consideration includes some forbearance, detriment, loss, or responsibility, that is given, suffered, or undertaken by a party as an inducement to another party to contract.

(8) ''Continuing care contract'' means a contract that includes a continuing care promise made, in exchange for 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 other writings incorporated by reference.

(9) ''Continuing care advisory committee'' means an advisory panel appointed pursuant to Section 1777.

(10) ''Continuing care promise'' means 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. Any such promise or representation, whether part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral, is a continuing care promise.

(11) ''Continuing care retirement community'' means a facility located within the State of California 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 distinct phases over a period of time. When the services are provided in residents' own homes, the homes into which the provider takes those services are considered part of the continuing care retirement community.

(12) ''Control'' means directing or causing the direction of the financial management or the policies of another entity, including an operator of a continuing care retirement community, whether by means of the controlling entity's ownership interest, contract, or any other involvement. A parent entity or sole member of an entity controls a subsidiary entity provider for a continuing care retirement community if its officers, directors, or agents directly participate in the management of the subsidiary entity or in the initiation or approval of policies that affect the continuing care retirement community's operations, including, but not limited to, approving budgets or the administrator for a continuing care retirement community.

(d) (1) ''Department'' means the State Department of Social Services.

(2) ''Deposit'' means any transfer of consideration, including a promise to transfer money or property, made by a depositor to any entity that promises or proposes to promise to provide continuing care, but is not authorized to enter into a continuing care contract with the potential depositor.

(3) ''Deposit agreement'' means any agreement made between any entity accepting a deposit and a depositor. Deposit agreements for deposits received by an applicant prior to the department's release of funds from the deposit escrow account shall be subject to the requirements described in Section 1780.4.

(4) ''Depository'' means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable deposit insurance program.

(5) ''Depositor'' means any prospective resident who pays a deposit. Where any portion of the consideration transferred to an applicant as a deposit or to a provider as consideration for a continuing care contract is transferred by a person other than the prospective resident or a resident, that third-party transferor shall have the same cancellation or refund rights as the prospective resident or resident for whose benefit the consideration was transferred.

(6) ''Director'' means the Director of Social Services.

(e) (1) ''Elderly'' means an individual who is 60 years of age or older.

(2) ''Entity'' means an individual, partnership, corporation, limited liability company, and any other form for doing business. Entity includes a person, sole proprietorship, estate, trust, association, and joint venture.

(3) ''Entrance fee'' means the sum of any initial, amortized, or deferred transfer of consideration made or promised to be made by, or on behalf of, 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 care for the term of the continuing care contract. Entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. An initial, amortized, or deferred transfer of consideration that is greater in value than 12 times the monthly care fee shall be presumed to be an entrance fee.

(4) ''Equity'' means the value of real property in excess of the aggregate amount of all liabilities secured by the property.

(5) ''Equity interest'' means an interest held by a resident in a continuing care retirement community that consists of either an ownership interest in any part of the continuing care retirement

community property or a transferable membership that entitles the holder to reside at the continuing care retirement community.

(6) ''Equity project'' means a continuing care retirement community where residents receive an equity interest in the continuing care retirement community property.

(7) ''Equity securities'' shall refer generally to large and midcapitalization corporate stocks that are publicly traded and readily liquidated for cash, and shall include shares in mutual funds that hold portfolios consisting predominantly of these stocks and other qualifying assets, as defined by Section 1792.2. Equity securities shall also include other similar securities that are specifically approved by the department.

(8) ''Escrow agent'' means a bank or institution, including, but not limited to, a title insurance company, approved by the department to hold and render accountings for deposits of cash or cash equivalents.

(f) ''Facility'' means any place or accommodation where a provider provides or will 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) (1) ''Inactive certificate of authority'' means a certificate that has been terminated under Section 1793.8.

(2) ''Investment securities'' means any of the following:

(A) Direct obligations of the United States, including obligations issued or held in book-entry form on the books of the United States Department of the Treasury or obligations the timely payment of the principal of, and the interest on, which are fully guaranteed by the United States.

(B) Obligations, debentures, notes, or other evidences of indebtedness issued or guaranteed by any of the following:

(i) The Federal Home Loan Bank System.

(ii) The Export-Import Bank of the United States.

(iii) The Federal Financing Bank.

(iv) The Government National Mortgage Association.

(v) The Farmer's Home Administration.

(vi) The Federal Home Loan Mortgage Corporation of the Federal Housing Administration.

(vii) Any agency, department, or other instrumentality of the United States if the obligations are rated in one of the two highest rating categories of each rating agency rating those obligations.

(C) Bonds of the State of California or of any county, city and county, or city in this state, if rated in one of the two highest rating categories of each rating agency rating those bonds.

(D) Commercial paper of finance companies and banking institutions rated in one of the two highest categories of each rating agency rating those instruments.

(E) Repurchase agreements fully secured by collateral security described in subparagraph (A) or (B), as evidenced by an opinion of counsel, if the collateral is held by the provider or a third party during the term of the repurchase agreement, pursuant to the terms of the agreement, subject to liens or claims of third parties, and has a market value, which is determined at least every 14 days, at least equal to the amount so invested.

(F) Long-term investment agreements, which have maturity dates in excess of one year, with financial institutions, including, but not limited to, banks and insurance companies or their affiliates, if the financial institution's paying ability for debt obligations or long-term claims or the paying ability of a related guarantor of the financial institution for these obligations or claims, is rated in one of the two highest rating categories of each rating agency rating those instruments, or if the short-term investment agreements are with the financial institution or the related guarantor of the financial institution, the long-term or short-term debt obligations, whichever is applicable, of which are rated in one of the two highest long-term or short-term rating categories, of each rating agency rating the bonds of the financial institution or the related guarantor, provided that if the rating falls below the two highest rating categories, the investment agreement shall allow the provider the option to replace the financial institution or the related guarantor of the financial institution or shall provide for the investment securities to be fully collateralized by investments described in subparagraph (A), and, provided further, if so collateralized, that the provider has a perfected first security lien on the collateral, as evidenced by an opinion of counsel and the collateral is held by the provider.

(G) Banker's acceptances or certificates of deposit of, or time deposits in, any savings and loan association that meets any of the following criteria:

(i) The debt obligations of the savings and loan association, or in the case of a principal bank, of the bank holding company, are rated in one of the two highest rating categories of each rating agency rating those instruments.

(ii) The certificates of deposit or time deposits are fully insured by the Federal Deposit Insurance Corporation.

(iii) The certificates of deposit or time deposits are secured at all times, in the manner and to the extent provided by law, by collateral security described in subparagraph (A) or (B) with a market value, valued at least quarterly, of no less than the original amount of moneys so invested.

(H) Taxable money market government portfolios restricted to obligations issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States.

(I) Obligations the interest on which is excluded from gross income for federal income tax purposes and money market mutual funds whose portfolios are restricted to these obligations, if the obligations or mutual funds are rated in one of the two highest rating categories by each rating agency rating those obligations.

(J) Bonds that are not issued by the United States or any federal agency, but that are listed on a national exchange and that are rated at least ''A'' by Moody's Investors Service, or the equivalent rating by Standard and Poor's Corporation or Fitch Investors Service.

(K) Bonds not listed on a national exchange that are traded on an over-the-counter basis, and that are rated at least ''Aa'' by Moody's Investors Service or ''AA'' by Standard and Poor's Corporation or Fitch Investors Service.

(j) (reserved)

(k) (reserved)

(*l*) ''Life care contract'' means a continuing care contract that includes a promise, expressed or implied, by a provider to provide or pay for routine services at all levels of care, including acute care and the services of physicians and surgeons, to the extent not covered by other public or private insurance benefits, to a resident for the duration of his or her life. Care shall be provided under a life care contract 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. No change may be made in the monthly fee based on level of care. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(m) (1) ''Monthly care fee'' means the fee charged to a resident in a continuing care contract on a monthly or other periodic basis for current accommodations and services including care, board, or lodging. Periodic entrance fee payments or other prepayments shall not be monthly care fees.

(2) ''Monthly fee contract'' means a continuing care contract that requires residents to pay monthly care fees.

(n) ''Nonambulatory person'' means a person who is unable to leave a building unassisted under emergency conditions in the manner 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) ''Periodic charges'' means fees paid by a resident on a periodic basis.

(3) ''Permit to accept deposits'' means a written authorization by the department permitting an applicant to enter into deposit agreements regarding a single specified continuing care retirement community.

(4) ''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.

(5) ''Preferred access'' means that residents who have previously occupied a residential living unit have a right over other persons to any assisted living or skilled nursing beds that are available at the community.

(6) ''Processing fee'' means a payment to cover administrative costs of processing the application of a depositor or prospective resident.

(7) ''Promise to provide one or more elements of care'' means any expressed or implied representation that one or more elements of care will be provided or will be available, such as by preferred access.

(8) ''Proposes'' means a representation that an applicant or provider will or intends to make a future promise to provide care, including a promise that is subject to a condition, such as the construction of a continuing care retirement community or the acquisition of a certificate of authority.

(9) ''Provider'' means an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. ''Provider'' also includes any entity that controls an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. The department shall determine whether an entity controls another entity for purposes of this article. No homeowner's association, cooperative, or condominium association may be a provider.

(10) ''Provisional certificate of authority'' means the certificate issued by the department, properly executed and bearing the State Seal, under Section 1786. A provisional certificate of authority shall be limited to the specific continuing care retirement community and number of units identified in the applicant's application.

(q) (reserved)

(r) (1) ''Refund reserve'' means the reserve a provider is required to maintain, as provided in Section 1792.6.

(2) ''Refundable contract'' means a continuing care contract that includes a promise, expressed or implied, by the provider to pay an entrance fee refund or to repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident's sixth year of residency. Providers that enter into

refundable contracts shall be subject to the refund reserve requirements of Section 1792.6. A continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident shall not be considered a refundable contract for purposes of the refund reserve requirements of Section 1792.6, provided that this conditional promise of repayment is not referred to by the applicant or provider as a ''refund.''

(3) ''Resale fee'' means a levy by the provider against the proceeds from the sale of a transferor's equity interest.

(4) ''Reservation fee'' refers to consideration collected by an entity that has made a continuing care promise or is proposing to make this promise and has complied with Section 1771.4.

(5) ''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.

(6) ''Residential care facility for the elderly'' means a housing arrangement as defined by Section 1569.2.

(7) ''Residential living unit'' means a living unit in a continuing care retirement community that is not used exclusively for assisted living services or nursing services.

(s) (reserved)

(t) (1) ''Termination'' means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) ''Transfer trauma'' means death, depression, or regressive behavior, that is caused by the abrupt and involuntary transfer of an elderly resident from one home to another and results from 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, or the loss of visits from friends and relatives who may be unable to reach the new facility.

(3) ''Transferor'' means a person who transfers, or promises to transfer, consideration in exchange for care and related services under a continuing care contract or proposed continuing care contract, for the benefit of another. A transferor shall have the same rights to cancel and obtain a refund as the depositor under the deposit agreement or the resident under a continuing care contract.

SEC. 3. Section 1771.2 of the Health and Safety Code is amended to read:

1771.2. (a) An entity shall apply for and hold a currently valid permit to accept deposits before it may enter into a deposit agreement or accept a deposit.

(b) A provider shall hold a currently valid provisional certificate of authority or certificate of authority before it may enter into a continuing care contract.

(c) Before a provider subcontracts or assigns to another entity the responsibility to provide continuing care, that other entity shall have a current and valid certificate of authority. A provider holding a certificate of authority may contract for the provision of a particular aspect of continuing care, such as medical care, with another entity that does not possess a certificate of authority, if that other entity is appropriately licensed under laws of this state to provide that care, and the provider has not paid in advance for more than one year for that care.

(d) If an entity enters into an agreement to provide care for life or for more than one year to a person under 60 years of age in return for consideration, and the agreement includes the provision of services to that person after age 60, when the person turns 60 years of age, the promising entity shall comply with all the requirements imposed by this chapter.

SEC. 4. Section 1771.3 is added to the Health and Safety Code, to read:

1771.3. (a) This chapter shall not apply to either of the following:

(1) An arrangement for the care of a person by a relative.

(2) An arrangement for the care of a person or persons from only one family by a friend.

(b) This chapter shall not apply to any admission or residence agreements offered by residential communities for the elderly or residential care facilities for the elderly that promise residents preferred access to assisted living services or nursing care, when each of the following conditions is satisfied:

(1) Residents pay on a fee-for-service basis for available assisted living services and nursing care.

(2) The fees paid for available assisted living services and nursing care are the same for residents who have previously occupied a residential living unit as for residents who have not previously occupied a residential living unit.

(3) No entrance fee or prepayment for future care or access, other than monthly care fees, is paid by, or charged to, any resident at the community or facility. For purposes of this paragraph, the term entrance fee shall not include initial, deferred, or amortized payments that cumulatively do not exceed seven thousand five hundred dollars ($7,500).

(4) The provider has not made a continuing care promise of preferred access, other than a promise as described in paragraph (5).

(5) The admission or residence agreement states:

(A) ''This agreement does not guarantee that an assisted living or nursing bed will be available for residents, but, instead, promises preferred access to any assisted living or nursing beds that are available at the community or facility. The promise of preferred access gives residents who have previously occupied a residential living unit a right over other persons to such beds.''

(B) ''A continuing care contract promises that care will be provided to residents for life or for a term in excess of a year. (Name of community or facility) is not a continuing care retirement community and (name of provider) does not hold a certificate of authority to enter into continuing care contracts and is not required to have the same fiscal reserves as a continuing care provider. This agreement is not a continuing care contract and is exempted from the continuing care statutes under subdivision (b) of Section 1771.3 of the Health and Safety Code so long as the conditions set forth in that section are met.''

(6) The admission or residence agreement also states the policies and procedures regarding transfers to higher levels of care within the community or facility.

(c) Any entity may apply to the department for a Letter of Exemption stating that the requesting entity satisfies the requirements for an exemption under this section.

(d) The department shall issue a Letter of Exemption to a requesting entity if the department determines either of the following:

(1) The requesting entity satisfies each of the requirements for an exemption under subdivision (b).

(2) The requesting entity satisfies each of the requirements for an exemption under subdivision (b) other than the requirements of paragraph (2) of subdivision (b), and there is no substantial difference between the following:

(A) The fees for available assisted living services and skilled nursing care paid by residents who have previously occupied a residential living unit.

(B) The fees for available assisted living services and skilled nursing care paid by residents who have not previously occupied a residential living unit.

(e) An application to the department for a Letter of Exemption shall include all of the following:

(1) A nonrefundable one thousand dollar ($1,000) application fee.

(2) The name and business address of the applicant.

(3) A description of the services and care available or provided to residents of the community or facility.

(4) Documentation establishing that the requesting entity satisfies the requirements for an exemption under this section, including all of the following:

(A) A schedule showing all fees for assisted living services and skilled nursing care charged to residents at the facility or community who have previously occupied a residential living unit.

(B) A schedule showing all fees for assisted living services and skilled nursing care charged to residents at the facility or community who have not previously occupied a residential living unit.

(C) A description of the differences between the fees for assisted living services and skilled nursing care charged to residents who have not previously occupied a residential unit and the fees for assisted living services and skilled nursing care charged to residents who have previously occupied a residential unit.

(D) A schedule showing any other fees charged to residents of the community or facility.

(E) Copies of all admission and residence agreement forms that have been entered into, or will be entered into, with residents at the community or facility.

(5) Any other information reasonably requested by the department.

(f) If at any time any of the conditions stated in this section are not satisfied, then the requirements of this chapter apply, and the department may impose appropriate remedies and penalties set forth in Article 7 (commencing with Section 1793.5).

SEC. 5. Section 1771.4 of the Health and Safety Code is repealed.

SEC. 6. Section 1771.4 is added to the Health and Safety Code, to read:

1771.4. An entity may conduct a market test for a proposed continuing care retirement community and collect reservation fees from persons interested in residing at the proposed continuing care retirement community without violating this chapter if all of the following conditions are met:

(a) The entity has filed with the department an application for a permit to accept deposits and a certificate of authority for the project.

(b) The entity's application includes the proposed reservation agreement form and a proposed escrow agreement that provide all of the following:

(1) All fees shall be deposited in escrow.

(2) Refunds shall be made within 10 calendar days after the payer's or proposed resident's request or 10 days after denial of the application for a permit to accept deposits.

(3) All reservation fees shall be converted to deposits within 15 days after a permit to accept deposits is issued.

(c) The department has acknowledged in writing its receipt of the entity's application and its approval of the entity's proposed reservation agreement between the payer and the entity and the escrow agreement between the escrow holder and the entity.

(d) The amount of any reservation fee collected by the entity does not exceed one thousand dollars ($1,000) or 1 percent of the average entrance fee amount as determined from the entity's application, whichever is greater.

(e) The entity places all reservation fees collected by the entity into an escrow under the terms of the approved reservation agreement and escrow agreement.

SEC. 7. Section 1771.5 of the Health and Safety Code is repealed.

SEC. 8. Section 1771.5 is added to the Health and Safety Code, to read:

1771.5. The department shall not issue a provisional certificate of authority or a certificate of authority to an applicant until the applicant has obtained licenses for the entire continuing care retirement community, including a license to operate the residential living and assisted living units, pursuant to Chapter 3.2 (commencing with Section 1569) and if a skilled nursing facility is on the premises, a license for the facility pursuant to Chapter 2 (commencing with Section 1250).

SEC. 9. Section 1771.6 of the Health and Safety Code is repealed.

SEC. 10. Section 1771.6 is added to the Health and Safety Code, to read:

1771.6. (a) Any entity may apply to the department for a Letter of Nonapplicability for reasons other than those specified in Section 1771.3, which states that the provisions of this chapter do not apply to its community, project, or proposed project.

(b) Applications for Letters of Nonapplicability shall be made to the department in writing and include the following:

(1) A nonrefundable one thousand dollar ($1,000) application fee.

(2) A list of the reasons why the existing or proposed project may not be subject to this chapter.

(3) A copy of the existing or proposed contract between the entity and residents.

(4) Copies of all advertising material.

(5) Any other information reasonably requested by the department.

(c) The department shall do both of the following:

(1) Within seven calendar days, acknowledge receipt of the request for a Letter of Nonapplicability.

(2) Within 30 calendar days after all materials are received, either issue the Letter of Nonapplicability or notify the entity of the department's reasons for denial of the request.

(d) (1) If the department determines that the entity does not qualify for a Letter of Nonapplicability, the entity shall refrain from, or immediately cease, entering into continuing care contracts.

(2) If an entity to which this subdivision applies intends to provide continuing care, an application for a certificate of authority shall be required to be filed with the department pursuant to this chapter.

(3) If an entity to which this subdivision applies does not intend to provide continuing care, it shall alter its plan of operation so that the project is not subject to this chapter. To obtain a Letter of Nonapplicability for the revised project, the entity shall submit a new application and fee.

SEC. 11. Section 1771.7 of the Health and Safety Code is repealed.

SEC. 12. Section 1771.7 is added to the Health and Safety Code, to read:

1771.7. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege 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 residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of Title 22 of the California Code of Regulations, and applicable federal law and regulations.

(b) All residents in residential living units shall 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 provider's governing body.

(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.

(c) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Permit the formation of a resident association by interested residents who may elect a governing body. The provider shall 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 association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. 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.

(d) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at or before the resident's admission to the community.

(e) The department may, upon receiving a complaint of a violation of 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 Advisory Committee for determination of compliance.

(f) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

SEC. 13. Section 1771.8 of the Health and Safety Code is repealed.

SEC. 14. Section 1771.9 of the Health and Safety Code is amended and renumbered to read:

1771.8. (a) The Legislature finds and declares all of the following:

(1) 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.

(2) 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.

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body

to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as board members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.

(c) 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 the resident association or its governing body, 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 continuing care retirement 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.

(d) 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 (c).

(e) The governing body of a provider, or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d). The governing body of a provider, or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider, or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) Each provider shall make available to the resident association or its governing body, or if neither exists, to 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 association or its governing body, or if neither exists to a committee of residents, during the annual budget planning process.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (i) to participate as a resident representative to the provider's governing body may, at the option of the resident association, be selected in any one of the following ways:

(1) By a majority vote of the resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(2) If no resident association exists, any resident may organize a meeting of the majority of the residents of the continuing care retirement community to select or nominate residents to represent them before the governing body.

(3) Any other method designated by the resident association.

(*l*) The resident association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement 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 continuing care retirement community.

(m) Except as provided in subdivision (n), 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.

(n) Notwithstanding subdivision (m), 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 continuing care retirement communities.

(o) The provider shall pay all reasonable travel costs for the resident representative.

(p) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(q) Nothing in this section prohibits 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.

(r) On or before January 1, 2001, the Continuing Care Advisory Committee of the department established pursuant to Section 1777 shall evaluate and report to the Legislature on the implementation of this section.

SEC. 15. Section 1771.11 of the Health and Safety Code is amended and renumbered to read:

1771.10. 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. 16. Section 1772 of the Health and Safety Code is amended to read:

1772. (a) No report, circular, public announcement, certificate, financial statement, or any other printed matter or advertising material, or oral representation, that states or implies that an entity sponsors, guarantees, or assures the performance of any continuing care contract, shall be published or presented to any prospective resident unless both of the following have been met:

(1) Paragraph (5) of subdivision (a) of Section 1788 applies and the requirements of that paragraph have been satisfied.

(2) The entity files with the department a duly authorized and executed written declaration that it accepts full financial responsibility

for each continuing care contract. The filing entity shall be subject to the application requirements set forth in Article 2 (commencing with Section 1779), shall be a coobligor for the subject contracts, and shall be a coprovider on the applicable provisional certificate of authority and certificate of authority.

(b) Implied sponsorship includes the use of the entity's name for the purpose of implying that the entity's reputation may be relied upon to ensure the performance of the continuing care contract.

(c) Any implication that the entity may be financially responsible for these contracts may be rebutted by a conspicuous statement, in all continuing care contracts and marketing materials, that clearly discloses to prospective residents and all transferors that the entity is not financially responsible.

(d) On written appeal to the department, and for good cause shown, the department may, in its discretion, allow an affinity group exemption from this section. If an exemption is granted, every continuing care contract shall include a conspicuous statement which clearly discloses to prospective residents and all transferors that the affinity group entity is not financially responsible.

(e) If the name of an entity, including, but not limited to, a religion, is used in connection with the development, marketing, or continued operation of a continuing care retirement community, but that entity does not actually own, control, manage, or otherwise operate the continuing care retirement community, the provider shall clearly disclose the absence of that affiliation, involvement, or association with the continuing care retirement community in the continuing care contract.

SEC. 17. Section 1772.2 is added to the Health and Safety Code, to read:

1772.2. (a) All printed advertising materials, including brochures, circulars, public announcements, and similar publications pertaining to continuing care or a continuing care retirement community shall specify the number on the provider's provisional certificate of authority or certificate of authority.

(b) If the provider has not been issued a certificate of authority, all advertising materials shall specify both of the following:

(1) Whether an application has been filed.

(2) If applicable, that a permit to accept deposits or a provisional certificate of authority has been issued.

SEC. 18. Section 1773 of the Health and Safety Code is amended to read:

1773. (a) A provisional certificate of authority or certificate of authority may not be sold, transferred, or exchanged in any manner. A provider may not sell or transfer ownership of the continuing care retirement community without the approval of the department. Any

violation of this section shall cause the applicable provisional certificate of authority or certificate of authority to be forfeited by operation of law pursuant to subdivision (c) of Section 1793.7.

(b) A provider may not enter into a contract with a third party for overall management of the continuing care retirement community without the approval of the department. The department shall review the transaction for consistency with this chapter.

(c) Any violation of this section shall be grounds for revocation for the provider's provisional certificate of authority or certificate of authority under Section 1793.21.

SEC. 19. Section 1774 of the Health and Safety Code is amended to read:

1774. No arrangement allowed by a permit to accept deposits, a provisional certificate or authority, or a certificate of authority issued by the department under this chapter may be deemed a security for any purpose.

SEC. 20. Section 1775 of the Health and Safety Code is amended to read:

1775. (a) To the extent that this chapter, as interpreted by the department, conflicts with the statutes, regulations, or interpretations governing the sale or hire of real property, this chapter shall prevail.

(b) Notwithstanding any law or regulation to the contrary, a provider for a continuing care retirement community may restrict or abridge the right of any resident, whether or not the resident owns an equity interest, to sell, lease, encumber, or otherwise convey any interest in the resident's unit, and may require that the resident only sell, lease, or otherwise convey the interest to persons approved by the provider. Provider approval may be based on factors which include, but are not limited to, age, health status, insurance risk, financial status, or burden on the provider's personnel, resources, or physical facility. The provider shall record any restrictions on a real property interest.

(c) To the extent that this chapter conflicts with Sections 51.2 and 51.3 of the Civil Code, this chapter shall have precedence. A continuing care provider, at its discretion, may limit entrance based on age.

(d) This chapter imposes minimum requirements upon any entity promising to provide, proposing to promise to provide, or providing continuing care.

(e) This chapter shall be liberally construed for the protection of persons attempting to obtain or receiving continuing care.

(f) A resident's entry into a continuing care contract described in this chapter shall be presumptive evidence of the resident's intent not to return to his or her prior residence to live for purposes of qualifying for Medi-Cal coverage under Sections 14000 et seq. of the Welfare and

Institutions Code and Section 50425 of Title 22 of the California Code of Regulations.

SEC. 21. Section 1776.6 of the Health and Safety Code is amended to read:

1776.6. (a) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), the following documents are public information and shall be provided by the department upon request: audited financial statements, annual reports and accompanying documents, compliance or noncompliance with reserve requirements, whether an application for a permit to accept deposits and certificate of authority has been filed, whether a permit or certificate has been granted or denied, and the type of care offered by the provider.

(b) The department shall regard resident data used in the calculation of reserves as confidential.

SEC. 22. Section 1777 of the Health and Safety Code is amended to read:

1777. (a) The Continuing Care Advisory Committee of the department shall act in an advisory capacity to the department on matters relating to continuing care contracts.

(b) The members of the committee shall include:

(1) Three representatives of nonprofit continuing care providers pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment. One member shall represent a multifacility provider and shall be appointed by the Governor in even years. One member shall be appointed by the Senate Committee on Rules in odd years. One member shall be appointed by the Speaker of the Assembly in odd years.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, at least two of whom shall be residents of continuing care retirement communities but not residents of the same provider. One senior citizen member shall be appointed by the Governor in even years. One senior citizen member shall be appointed by the Senate Committee on Rules in odd years. One senior citizen member shall be appointed by the Speaker of the Assembly in odd years.

(3) A certified public accountant with experience in the continuing care industry, who is not a provider of continuing care services. This member shall be appointed by the Governor in even years.

(4) A representative of a for-profit provider of continuing care contracts pursuant to this chapter. This member shall be appointed by the Governor in even years.

(5) An actuary. This member shall be appointed by the Governor in even years.

(c) Commencing January 1, 1997, all members shall serve two-year terms and be appointed based on their interest and expertise in the subject area. The Governor shall designate the chairperson for the committee with the advice and consent of the Senate. A member may be reappointed at the pleasure of the appointing power. The appointing power shall fill all vacancies on the committee within 60 days. All members shall continue to serve until their successors are appointed and qualified.

(d) The members of the committee shall serve without compensation, except that each member shall be paid from the Continuing Care Provider Fee Fund a per diem of twenty-five dollars ($25) for each day's attendance at a meeting of the committee not to exceed six days in any month. The members of the committee shall also receive their actual and necessary travel expenses incurred in the course of their duties. Reimbursement of travel expenses shall be at rates not to exceed those applicable to comparable state employees under Department of Personnel Administration regulations.

(e) Prior to commencement of service, each member shall file with the department a statement of economic interest and a statement of conflict of interest pursuant to Article 3 (commencing with Section 87300) of the Government Code.

(f) If, during the period of appointment, any member no longer meets the qualifications of subdivision (b), that member shall submit his or her resignation to their appointing power and a qualified new member shall be appointed by the same power to fulfill the remainder of the term.

SEC. 23. Section 1777.2 of the Health and Safety Code is amended to read:

1777.2. (a) The Continuing Care Advisory Committee shall:

(1) Review the financial and managerial condition of continuing care retirement communities operating under a certificate of authority.

(2) Review the financial condition of any continuing care retirement community that the committee determines is indicating signs of financial difficulty and may be in need of close supervision.

(3) Monitor the condition of those continuing care retirement communities that the department or the chair of the committee may request.

(4) Make available consumer information on the selection of continuing care contracts and necessary contract protections in the purchase of continuing care contracts.

(5) Review new applications regarding financial, actuarial, and marketing feasibility as requested by the department.

(b) The committee shall make recommendations to the department regarding needed changes in its rules and regulations and upon request

provide advice regarding the feasibility of new continuing care retirement communities and the correction of problems relating to the management or operation of any continuing care retirement community. The committee shall also perform any other advisory functions necessary to improve the management and operation of continuing care retirement communities.

(c) The committee may report on its recommendations directly to the director of the department.

(d) The committee may hold meetings, as deemed necessary to the performance of its duties.

SEC. 24. Section 1777.4 of the Health and Safety Code is amended to read:

1777.4. Any member of the Continuing Care Advisory Committee is immune from civil liability based on acts performed in his or her official capacity. Costs of defending civil actions brought against a member for acts performed in his or her official capacity shall be borne by the complainant. However, nothing in this section immunizes any member for acts or omissions performed with malice or in bad faith.

SEC. 25. Section 1779 of the Health and Safety Code is amended to read:

1779. (a) An entity shall file an application for a permit to accept deposits and for a certificate of authority with the department, as set forth in this chapter, before doing any of the following:

(1) Accepting any deposit, reservation fee, or any other payment that is related to a promise or proposal to promise to provide continuing care.

(2) Entering into any reservation agreement, deposit agreement, or continuing care contract.

(3) Commencing construction of a prospective continuing care retirement community. If the project is to be constructed in phases, the application shall include all planned phases.

(4) Expanding an existing continuing care retirement community whether by converting existing buildings or by new construction.

(5) Converting an existing structure to a continuing care retirement community.

(6) Recommencing marketing on a planned continuing care retirement community when the applicant has previously forfeited a permit to accept deposits pursuant to Section 1703.7.

(7) Executing new continuing care contracts after a provisional certificate of authority or certificate of authority has been inactivated, revoked, surrendered, or forfeited.

(8) Closing the sale or transfer of a continuing care retirement community or assuming responsibility for continuing care contracts.

(b) For purposes of paragraph (4) of subdivision (a), an expansion of a continuing care retirement community shall be deemed to occur when

there is an increase in the capacity stated on the residential care facility for the elderly license issued to the continuing care retirement community, 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 may affect obligations to current residents.

(c) Any provider that alters, or proposes to alter, its organization, including by means of a change in the type of entity it is, separation from another entity, merger, affiliation, spinoff, or sale, shall file a new application and obtain a new certificate of authority before the new entity may enter into any new continuing care contracts.

(d) A new application shall not be 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 in writing of the name change and shall return the previously issued certificate of authority for reissuance under the new name.

(e) Within 10 days of submitting an application for a certificate of authority pursuant to paragraph (3), (4), (7), or (8) of subdivision (a), the provider shall notify residents of the provider's existing community or communities of its application. The provider shall notify its resident associations of any filing with the department to obtain new financing, additional financing for a continuing care retirement community, the sale or transfer of a continuing care retirement community, any change in structure, and of any applications to the department for any expansion of a continuing care retirement community. A summary of the plans and application shall be posted in a prominent location in the continuing care retirement community 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 continuing care retirement community.

(f) When the department determines that it has sufficient information on the provider or determines that the provisions do not apply and the protections provided by this article are not compromised, the department may eliminate all or portions of the application contents required under Section 1779.4 for applications filed pursuant to paragraphs (4), (5), (6), (7), and (8) of subdivision (a) or pursuant to subdivision (c).

SEC. 26. Section 1779.2 of the Health and Safety Code is amended to read:

1779.2. (a) Any entity filing an application for a permit to accept deposits and a certificate of authority shall pay an application fee.

(b) The applicant shall pay 80 percent of the application fee for all planned phases at the time the applicant submits its application. The 80 percent payment shall be made by check payable to the Continuing Care

Provider Fee Fund. The department shall not process the application until it has received this fee.

(c) For new continuing care retirement communities or for the sale or transfer of existing continuing care retirement communities, the application fee shall be calculated as one-tenth of 1 percent of the purchase price of the continuing care retirement community, or the estimated construction cost, including the purchase price of the land or the present value of any long-term lease and all items listed in subparagraph (D) of paragraph (2) of subdivision (y) of Section 1779.4.

(d) For existing continuing care retirement communities that are proposing new phases, remodeling or an expansion, the application fee shall be calculated as one-tenth of 1 percent of the cost of the addition, annexation, or renovation, including the value of the land and improvements and all items listed in subparagraph (D) of paragraph (2) of subdivision (y) of Section 1779.4.

(e) For existing facilities converting to continuing care retirement communities, the application fee shall be calculated as one-tenth of 1 percent of the current appraised value of the facility, including the land, or present value of any long-term lease.

(f) For organizational changes, the application fee shall be determined by the department based on the time and resources it considers reasonably necessary to process the application, including any consultant fees. The minimum application fee for those applications shall be two thousand dollars ($2,000).

(g) The applicant shall pay the remainder of the application fee before the provisional certificate of authority is issued, or in the case of expansions or remodeling, before final approval of the project is granted. The applicant shall make this payment by check payable to the Continuing Care Provider Fee Fund.

SEC. 27. Section 1779.4 of the Health and Safety Code is amended to read:

1779.4. An application shall contain all of the following:

(a) A statement signed by the applicant under penalty of perjury certifying that to the best of the applicant's knowledge and belief, the items submitted in the application are correct. If the applicant is a corporation, the chief executive officer shall sign the statement. If there are multiple applicants, these requirements shall apply to each applicant.

(b) The name and business address of the applicant.

(c) An itemization of the total fee calculation, including sources of figures used, and a check in the amount of 80 percent of the total application fee.

(d) The name, address, and a description of the real property of the continuing care retirement community.

(e) An estimate of the number of continuing care residents at the continuing care retirement community.

(f) A description of the proposed continuing care retirement community, including the services and care to be provided to residents or available for residents.

(g) A statement indicating whether the application is for a certificate of authority to enter into continuing care or life care contracts.

(h) A license to operate the proposed continuing care retirement community as a residential care facility for the elderly or documentation establishing that the applicant has received a preliminary approval for licensure from the department's Community Care Licensing Division.

(i) A license to operate the proposed skilled nursing facility or evidence that an application has been filed with the Licensing and Certification Division of the State Department of Health Services, if applicable.

(j) A statement disclosing any revocation or other disciplinary action taken, or in the process of being taken, against a license, permit, or certificate held or previously held by the applicant.

(k) A description of any matter in which any interested party involved with the proposed continuing care retirement community has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or the misappropriation of property. For the purpose of this subdivision, ''interested party'' includes any representative of the developer of the proposed continuing care retirement community or the applicant, including all general partners, executive officers, or chief operating officers and board members of corporations; and managing members and managers of limited liability companies for each entity; who has significant decisionmaking authority with respect to the proposed continuing care retirement community.

(*l*) If the applicant is an entity other than an individual, the following information shall also be submitted:

(1) A statement identifying the type of legal entity and listing the interest and extent of the interest of each principal in the legal entity. For the purposes of this paragraph, ''principal'' means any person or entity having a financial interest in the legal entity of 10 percent or more. When the application is submitted in the name of a corporation, the parent, sole corporate shareholder, or sole corporate member who controls the operation of the continuing care retirement community shall be listed as an applicant. When multiple corporate applicants exist, they shall be listed jointly by corporate name on the application, and the certificate of authority shall be issued in the joint names of the corporations. When the application is submitted by a partnership, all general partners shall be

named as coapplicants and the department shall name them as coproviders on any certificate of authority it issues.

(2) The names of the members of the provider's governing body.

(3) A statement indicating whether the applicant was or is affiliated with a religious, charitable, nonprofit or for-profit organization, and the extent of any affiliation. The statement shall also include the extent, if any, to which the affiliate organization will be responsible for the financial and contract obligations of the applicant and shall be signed by a responsible officer of the affiliate organization.

(4) A statement identifying any parent entity or other affiliate entity, the primary activities of each entity identified, the relationship of each entity to the applicant, and the interest in the applicant held by each entity.

(5) Copies of all contracts, management agreements, or other documents setting forth the relationships with each of the other entities.

(6) A statement indicating whether the applicant, a principal, a parent entity, affiliate entity, subsidiary entity, any responsible employee, manager, or board member, or anyone who profits from the continuing care retirement community has had applied against it any injunctive or restrictive order of a court of record, or any suspension or revocation of any state or federal license, permit, or certificate, arising out of or relating to business activity of health or nonmedical care, including, but not limited to, actions affecting a license to operate a health care institution, nursing home, intermediate care facility, hospital, home health agency, residential care facility for the elderly, community care facility, or child day care facility.

(m) A description of the business experience of the applicants in the operation or management of similar facilities.

(n) A copy of any advertising material regarding the proposed continuing care retirement community prepared for distribution or publication.

(o) Evidence of the bonds required by Section 1789.8.

(p) A copy of any proposed reservation agreement.

(q) A copy of the proposed deposit agreements.

(r) The name of the proposed escrow agent and depository.

(s) Any copies of reservation and deposit escrow account agreements.

(t) A copy of any proposed continuing care contracts.

(u) A statement of any monthly care fees to be paid by residents, the components and services considered in determining the fees, and the manner by which the provider may adjust these fees in the future. If the continuing care retirement community is already in operation, or if the provider operates one or more similar continuing care retirement communities within this state, the statement shall include tables showing the frequency and each percentage increase in monthly care

rates at each continuing care retirement community for the previous five years, or any shorter period for which each continuing care retirement community may have been operated by the provider or his or her predecessor in interest.

(v) A statement of the actions that have been, or will be, taken by the applicant to fund reserves as required by Section 1792 or 1792.6 and to otherwise ensure that the applicant will have adequate finances to fully perform continuing care contract obligations. The statement shall describe actions such as establishing restricted accounts, sinking funds, trust accounts, or additional reserves. If the applicant is purchasing an existing continuing care retirement community from a selling provider, the applicant shall provide an actuarial report to determine the liabilities of existing continuing care contracts and demonstrate the applicant's ability to fund those obligations.

(w) A copy of audited financial statements for the three most recent fiscal years of the applicant or any shorter period of time the applicant has been in existence, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants. The audited financial statements shall be accompanied by a statement signed and dated by both the chief financial officer and chief executive officer for the applicant or, if applicable, by each general partner, or each managing member and manager, stating that the financial statements are complete, true, and correct in all material matters to the best of their knowledge.

(x) Unaudited interim financial statements shall be included if the applicant's fiscal year ended more than 90 days prior to the date of filing. The statements shall be either quarterly or monthly, and prepared on the same basis as the annual audited financial statements or any other basis acceptable to the department.

(y) A financial study and a marketing study that reasonably project the feasibility of the proposed continuing care retirement community and are prepared by a firm or firms acceptable to the department. These studies shall address and evaluate, at a minimum, all of the following items:

(1) The applicant and its prior experience, qualifications, and management, including a detailed description of the applicant's proposed continuing care retirement community, its service package, fee structure, and anticipated opening date.

(2) The construction plans, construction financing, and permanent financing for the proposed continuing care retirement community, including a description of the anticipated source, cost, terms, and use of all funds to be used in the land acquisition, construction, and operation of the continuing care retirement community. This proposal shall include, at a minimum, all of the following:

(A) A description of all debt to be incurred by the applicant for the continuing care retirement community, including the anticipated terms and costs of the financing. The applicant's outstanding indebtedness related to the continuing care retirement community may not, at any time, exceed the appraised value of the continuing care retirement community.

(B) A description of the source and amount of the equity to be contributed by the applicant.

(C) A description of the source and amount of all other funds, including entrance fees, that will be necessary to complete and operate the continuing care retirement community.

(D) A statement itemizing all estimated project costs, including the real property costs and the cost of acquiring or designing and constructing the continuing care retirement community, and all other similar costs that the provider expects to incur prior to the commencement of operation. This itemization shall identify all costs related to the continuing care retirement community or project, including financing expenses, legal expenses, occupancy development costs, marketing costs, and furniture and equipment.

(E) A description of the interest expense, insurance premiums, and property taxes that will be incurred prior to opening.

(F) An estimate of any proposed continuing care retirement community reserves required for items such as debt service, insurance premiums, and operations.

(G) An estimate of the amount of funds, if any, that will be necessary to fund startup losses, fund statutory and refundable contract reserves, and to otherwise provide additional financial resources in an amount sufficient to ensure full performance by the provider of its continuing care contract obligations.

(3) An analysis of the potential market for the applicant's continuing care retirement community, addressing such items as:

(A) A description of the service area, including its demographic, economic, and growth characteristics.

(B) A forecast of the market penetration the continuing care retirement community will achieve based on the proposed fee structure.

(C) Existing and planned competition in and about the primary service area.

(4) A detailed description of the sales and marketing plan, including all of the following:

(A) Marketing projections, anticipated sales, and cancellation rates.

(B) Month-by-month forecast of unit sales through sellout.

(C) A description of the marketing methods, staffing, and advertising media to be used by the applicant.

(D) An estimate of the total entrance fees to be received from residents prior to opening the continuing care retirement community.

(5) Projected move-in rates, deposit collections, and resident profiles, including couple mix by unit type, age distribution, care and nursing unit utilization, and unit turnover or resale rates.

(6) A description or analysis of development-period costs and revenues throughout the development of the proposed continuing care retirement community.

(z) Projected annual financial statements for the period commencing on the first day of the applicant's current fiscal year through at least the fifth year of operation.

(1) Projected annual financial statements shall be prepared on an accrual basis using the same accounting principles and procedures as the audited financial statements furnished pursuant to subdivision (x).

(2) Separate projected annual cash-flow statements shall be provided. These statements shall show projected annual cash-flows for the duration of any debt associated with the continuing care retirement community. If the continuing care retirement community property is leased, the cash-flow statement shall demonstrate the feasibility of closing the continuing care retirement community at the end of the lease period.

(A) The projected annual cash-flow statements shall be submitted using prevailing rates of interest, and assume no increase of revenues and expenses due to inflation.

(B) The projected annual cash-flow statements shall include all of the following:

(i) A detailed description and a full explanation of all assumptions used in preparing the projections, accompanied by supporting supplementary schedules and calculations, all to be consistent with the financial study and marketing study furnished pursuant to subdivision (y). The department may require such other supplementary schedules, calculations, or projections as it determines necessary for an adequate application.

(ii) Cash-flow from monthly operations showing projected revenues for monthly fees received from continuing care contracts, medical unit fees if applicable, other periodic fees, gifts and bequests used in operations, and any other projected source of revenue from operations less operating expenses.

(iii) Contractual cash-flow from activities showing projected revenues from presales, deposit receipts, entrance fees, and all other projected sources of revenue from activities, less contract acquisition, marketing, and advertising expenditures.

(iv) Cash-flows from financing activities, including, but not limited to, bond or loan proceeds less bond issue or loan costs and fees, debt

service including CAL Mortgage Insurance premiums, trustee fees, principal and interest payments, leases, contracts, rental agreements, or other long-term financing.

(v) Cash-flows from investment activities, including, but not limited to, construction progress payments, architect and engineering services, furnishings, and equipment not included in the construction contract, project development, inspection and testing, marketable securities, investment earnings, and interfund transfers.

(vi) The increase or decrease in cash during the projection period.

(vii) The beginning cash balance, which means cash, marketable securities, reserves, and other funds on hand, available, and committed to the proposed continuing care retirement community.

(viii) The cash balance at the end of the period.

(ix) Details of the components of the ending cash balance shall be provided for each period presented, including, but not limited to, the ending cash balances for bond reserves, other reserve funds, deposit funds, and construction funds balance.

(3) If the cash-flow statements required by paragraph (2) indicate that the provider will have cash balances exceeding two months' projected operating expenses of the continuing care retirement community, a description of the manner in which the cash balances will be invested, and the persons who will be making the investment decisions, shall accompany the application.

(4) The department may require the applicant to furnish additional data regarding its operating budgets, projections of cash required for major repairs and improvements, or any other matter related to its projections including additional information, schedules, and calculations regarding occupancy rate projections, unit types, couple mix, sex and age estimates for resident mix, turnover rates, refund obligations, and sales.

(aa) (1) A declaration by the applicant acknowledging that it is required to execute and record a Notice of Statutory Limitation on Transfer relating to continuing care retirement community property.

(2) The notice required in this subdivision shall be acknowledged and suitable for recordation, describe the property, declare the applicant's intention to use all or part of the described property for the purposes of a continuing care retirement community pursuant to this chapter, and shall be in substantially the following form:

"NOTICE OF STATUTORY LIMITATION ON TRANSFER

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care retirement community and accordingly, the use and transfer of the property is

subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789.4 of the Health and Safety Code. This notice is recorded pursuant to subdivision (aa) of Section 1779.4 of the Health and Safety Code.

The real property, which is legally owned by (insert the name of the legal owner) and is the subject of the statutory limitation to which this notice refers, is more particularly described as follows: (Insert the legal description and the assessor's parcel number of the real property to which this notice applies.)''

(3) The Notice of Statutory Limitation on Transfer shall remain in effect until notice of release is given by the department. The department shall execute and record a release of the notice upon proof of complete performance of all obligations to residents.

(4) Unless a Notice of Statutory Limitation on Transfer has been recorded with respect to the land on which the applicant or provider is operating, or intends to operate a continuing care retirement community, prior to the date of execution of any trust deed, mortgage, or any other lien or encumbrance securing or evidencing the payment of money and affecting land on which the applicant or provider intends to operate a continuing care retirement community, the applicant or provider shall give the department advance written notice of the proposed encumbrance. Upon the giving of notice to the department, the applicant or provider shall execute and record the Notice of Statutory Limitation on Transfer in the office of the county recorder in each county in which any portion of the continuing care retirement community is located prior to encumbering the continuing care retirement community property with the proposed encumbrance.

(5) In the event that the applicant or provider and the owner of record are not the same entity on the date on which execution and recordation of the notice is required, the leasehold or other interest in the continuing care retirement community property held by the applicant or provider shall survive in its entirety and without change, any transfer of the continuing care retirement community property by the owner. In addition, the applicant or provider shall record a memorandum of leasehold or other interest in the continuing care retirement community property that includes a provision stating that its interest in the property survives any transfer of the property by the owner. The applicant or provider shall provide a copy of the notice and the memorandum of interest to the owner of record by certified mail and to the department.

(6) The notice shall, and, if applicable, the memorandum of interest shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record and the name of the applicant or provider.

(ab) A statement that the applicant will keep the department informed of any material changes to the proposed continuing care retirement community or its application.

(ac) Any other information that may be required by the department for the proper administration and enforcement of this chapter.

SEC. 28. Section 1779.6 of the Health and Safety Code is amended to read:

1779.6. (a) Within seven calendar days of receipt of an initial application for a permit to accept deposits and a certificate of authority, the department shall acknowledge receipt of the application in writing.

(b) Within 30 calendar days following its receipt of an application, the department shall determine if the application is complete and inform the applicant of its determination. If the department determines that the application is incomplete, its notice to the applicant shall identify the additional forms, documents, information, and other materials required to complete the application. The department shall allow the applicant adequate time to submit the requested information and materials. This review may not determine the adequacy of the materials included in the application.

(c) Within 120 calendar days after the department determines that an application is complete, the department shall review the application for adequacy. An application shall be adequate if it complies with all the requirements imposed by this chapter, and both the financial study and marketing study reasonably project the feasibility of the proposed continuing care retirement community, as well as demonstrate the financial soundness of the applicant. The department shall either approve the application as adequate under this chapter or notify the applicant that its application is inadequate. If the application is inadequate, the department shall identify the deficiencies in the application, provide the appropriate code references, and give the applicant an opportunity to respond.

(d) Within 60 calendar days after receiving any additional information or clarification required from the applicant, the department shall respond to the applicant's submission in writing and state whether each specific deficiency has been addressed sufficiently to make the application adequate. If the department determines that the application is adequate and in compliance with this chapter, the department shall issue the permit to accept deposits. If the department determines that the response is inadequate, it may request additional information or clarification from the applicant pursuant to subdivision (c) or deny the application pursuant to Section 1779.10.

(e) If the applicant does not provide the department with the additional information within 90 days after the department's notice

described in subdivision (c), the application may be denied for being inadequate. Any new application shall require an application fee.

SEC. 28.5. Section 1779.7 is added to the Health and Safety Code, to read:

1779.7. (a) Where any portion of the consideration transferred to an applicant as a deposit or to a provider as consideration for a continuing care contract is transferred by a person other than the prospective resident or a resident, that third-party transferor shall have the same cancellation or refund rights as the prospective resident or resident for whose benefit this consideration was transferred.

(b) A transferor shall have the same rights to cancel and obtain a refund as the depositor under the deposit agreement or the resident under a continuing care contract.

SEC. 29. Section 1779.8 of the Health and Safety Code is amended to read:

1779.8. (a) The applicant shall notify the department of material changes in the application information submitted to the department, including the applicant's financial and marketing projections.

(b) An applicant shall provide to the department at least 60 days' advance written notice of any proposal to make any changes in the applicant's corporate name, structure, organization, operation, or financing.

(c) Within 30 calendar days after receiving notice of a change affecting the applicant or the application, the department shall advise the applicant:

(1) Whether additional information is required to process the pending application.

(2) Whether an additional application fee is required.

(3) Whether a new application and application fee must be submitted. The new application fee shall be twice the actual cost of additional review time caused by the change. This additional fee is payable to the department on demand.

(d) The department shall suspend the applicant's application and, if applicable, its permit to accept deposits if the applicant fails to give written notice of changes required by this section. The suspension shall remain in effect until the department has both assessed the potential impact of the changes on the interests of depositors and taken such action as necessary under this chapter to protect these interests.

SEC. 30. Section 1779.10 of the Health and Safety Code is amended to read:

1779.10. (a) The department shall deny an application for a permit to accept deposits and a certificate of authority if the applicant fails to do any of the following:

(1) Pay the application fee as required by Section 1779.2.

(2) Submit all information required by this chapter.

(3) Submit evidence to support a reasonable belief that any interested party of the proposed continuing care retirement community who has committed any offenses listed in subdivision (k) of Section 1779.4 is of such good character as to indicate rehabilitation.

(4) Submit evidence to support a reasonable belief that the applicant is capable of administering the continuing care retirement community in compliance with applicable laws and regulations when an action specified in subdivision (j) or (k) of Section 1779.4 has been taken against the applicant.

(5) Demonstrate the feasibility of the proposed continuing care retirement community.

(6) Comply with residential care facility for the elderly licensing requirements.

(b) If the application is denied, no portion of the paid application fee shall be refundable or refunded.

(c) Immediately upon the denial of an application, the department shall notify the applicant in writing.

(d) The Notice of Denial from the department shall contain all of the following:

(1) A statement that the application is denied.

(2) The grounds for the denial.

(3) A statement informing the applicant that it has the right to appeal.

(4) A statement that the applicant has 30 calendar days from the date that the Notice of Denial was mailed to appeal the denial, and where to send the appeal.

(e) If the applicant appeals the denial, further proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 31. Section 1780 of the Health and Safety Code is amended to read:

1780. The department shall issue a permit to accept deposits when it has done all of the following:

(a) Determined that the application is adequate.

(b) Determined that the proposed continuing care retirement community financial and marketing studies are acceptable.

(c) Reviewed and approved the deposit agreements.

(d) Reviewed and approved the deposit escrow account agreement.

SEC. 32. Section 1780.2 of the Health and Safety Code is amended to read:

1780.2. (a) A deposit may be paid in one or several payments, at or after the time the parties enter into the deposit agreement.

A deposit shall be paid by cash or cash equivalent, jointly payable to the applicant and the escrow agent or depository. Possession and control

of any deposit agreement shall be transferred to the escrow agent at the time the deposit is paid.

(b) A processing fee may be added to the deposit.

(1) The processing fee shall not exceed 1 percent of the amount of the average entrance fee or five hundred dollars ($500), whichever is greater.

(2) A nonrefundable processing fee may be paid directly to the applicant without being placed in the deposit escrow account.

(c) Payments made by a depositor for upgrades or modifications to the living unit shall not be placed in escrow with deposits. The applicant shall provide written refund policies to the depositor before accepting any payments for modifications or upgrades.

(d) The applicant shall furnish to the department within the first 10 days of each calendar month a list of all residents who have made payments for modifications or upgrades, the amounts each resident has paid, the date of each payment, and the unit to be modified or upgraded for each resident.

(e) All payments for modifications or upgrades shall be refunded to the depositor with interest if the applicant does not receive a certificate of authority for the proposed continuing care retirement community or expansion.

(f) The department may record a lien against the continuing care retirement community property, or any portion of the continuing care retirement community property, to secure the applicant's obligations to refund the depositor's payments made for modifications or upgrades. Any lien created under this section shall be to protect depositors and shall be governed by Section 1793.15.

SEC. 33. Section 1780.4 of the Health and Safety Code is amended to read:

1780.4. (a) All deposit agreements between the applicant and the depositor shall be in writing and shall contain all information required by this section.

(b) All deposit agreement forms shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval of the forms by the department.

(d) All text in deposit agreement forms shall be printed in at least 10-point typeface.

(e) The deposit agreement form shall provide all of the following:

(1) An estimated date for commencement of construction of the proposed continuing care retirement community or, if applicable, each phase not to exceed 36 months from the date the permit to accept deposits is issued.

(2) A statement to the effect that the applicant will notify depositors of any material change in the application.

(3) The identity of the specific unit reserved and the total deposit for that unit.

(4) Processing fee terms and conditions, including:

(A) The amount.

(B) A statement explaining the applicant's policy regarding refund or retention of the processing fee in the event of death of the depositor or voluntary cancellation by the depositor.

(C) Notice that the processing fee shall be refunded within 30 days if the applicant does not accept the depositor for residency, or the applicant fails to construct the continuing care retirement community before the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(5) Requirements for payment of the deposit by the depositor.

(6) A statement informing the depositor that their deposit payments will be converted to an entrance fee payment at the time the continuing care contract is executed.

(7) A statement informing the depositor that deposits shall be refunded within 30 calendar days of the depositor's nonacceptance for residency or notice to the applicant of the death of the depositor.

(8) A statement informing the depositor that all deposits shall be refunded to the depositors if the continuing care retirement community is not constructed by the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(9) A statement informing the depositor that a refund of the deposit within 10 calendar days of notice of cancellation by the depositor. The deposit agreement shall state that depositors who have deposited more than one thousand dollars ($1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, will not be entitled to a refund of their deposit until the provisional certificate of authority is issued or after one of the following occurs:

(A) Another depositor has reserved the canceling depositor's specific residential unit and paid the necessary deposit.

(B) The depositor no longer meets financial or health requirements for admission.

(C) The applicant fails to meet the requirements of Section 1786 or 1786.2.

(10) A statement to depositors that specifies when funds may be released from escrow to the applicant and explains that thereafter the depositor's funds will not have escrow protection.

(11) A statement advising the depositor whether interest will be paid to the depositor on deposits placed in the deposit escrow account.

(f) If cash equivalents are to be accepted in lieu of cash, all of the following shall also be included in the deposit agreement:

(1) A statement that cash equivalents that may be accepted as deposits shall be either certificates of deposit or United States securities with maturities of five years or less.

(2) A statement that the instruments will be held by the escrow agent in the form in which they were delivered and assigned by the depositor until they are replaced by cash or converted to cash.

(3) A statement that the depositor will be required to assign the instruments to a neutral third-party escrow agent. If the bank or entity that issued the instruments refuses to allow this assignment, the escrow agent shall not accept the instruments. These instruments shall be reassigned to the depositor if the depositor terminates the deposit agreement before the instruments mature. If the depositor terminates the deposit agreement after the instruments mature, the depositor shall receive a cash refund of the portion of the deposit represented by the matured instruments.

(4) A statement that any amount by which the face value of the deposited instruments exceeds the required deposit shall be deemed part of the deposit and shall be applied against the depositor's obligations under the deposit agreement.

(5) A statement that the instruments shall be converted to, or replaced with, cash prior to the department's authorization for the release of deposits to the applicant. The depositor shall be advised that if the depositor does not substitute cash in the amount equal to the deposit, the applicant may do either of the following:

(A) Direct the escrow agent to sell, redeem, or otherwise convert the instruments to cash and to treat the proceeds in the same manner as it treats cash deposits under the deposit agreement. The costs of any such sale, redemption, or conversion, including, without limitation, transaction fees and any early withdrawal penalties, may be charged to the depositor and paid out of the cash or other instruments received from the depositor in escrow. If there is a shortfall, the depositor may be immediately obligated to pay the shortfall by check jointly payable to the applicant and the escrow agent.

(B) Terminate the deposit agreement. In this event, the escrow agent shall reassign the property to the depositor and refund all cash in escrow within the time periods specified in the deposit agreement.

(g) A statement that deposits will be invested in instruments guaranteed by the federal government or an agency of the federal government, or in investment funds secured by federally guaranteed instruments.

(h) A statement that no funds deposited in a deposit escrow account shall be subject to any liens, judgments, garnishments, or creditor's

claims against the applicant, the proposed continuing care retirement community property, or the continuing care retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent, except that cash equivalent deposits may be subject to transactions fees, commissions, prepayment penalties, and other fees incurred in connection with these deposits.

(i) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the continuing care retirement community's existence shall be attached to each deposit agreement. This schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

SEC. 34. Section 1781 of the Health and Safety Code is amended to read:

1781. (a) All deposits, excluding processing fees, shall be placed in an escrow account. All terms governing the deposit escrow account shall be approved in advance by the department.

(b) The deposit escrow account shall be established by an escrow agent and all deposits shall be deposited in a depository located in California and approved by the department. The department's approval of the depository shall be based, in part, upon its ability to ensure the safety of funds and properties entrusted to it and its qualifications to perform the obligations of the depository pursuant to the deposit escrow account agreement and this chapter. The depository may be the same entity as the escrow agent. All deposits shall be kept and maintained in a segregated account without any commingling with other funds, including any funds or accounts owned by the applicant.

(c) If the escrow agent is a title company, it shall meet the following requirements:

(1) A Standard and Poors rating of ''A'' or better or a comparable rating from a comparable rating service.

(2) Licensure in good standing with the Department of Insurance.

(3) Tangible net equity as required by the Department of Insurance.

(4) Reserves as required by the Department of Insurance.

(d) All deposits shall remain in escrow until the department has authorized release of the deposits, as provided in Section 1783.3.

(e) Deposits shall be invested in instruments guaranteed by the federal government or an agency of the federal government, or in investment funds secured by federally guaranteed instruments.

(f) No funds deposited in a deposit escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant or the continuing care retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent except that cash equivalent deposits may

be subject to transaction fees, commissions, prepayment penalties, and other fees incurred in connection with those deposits.

SEC. 35. Section 1781.2 of the Health and Safety Code is amended to read:

1781.2. (a) All deposits shall be delivered to the escrow agent and deposited into the deposit escrow account within five business days after receipt by the applicant. The deposit escrow account shall be accounted for in a separate escrow account.

(b) The applicant shall provide, with all deposits delivered to the escrow holder, a copy of the executed deposit agreement, a copy of the receipt given to the depositor, a summary of all deposits made on that date, and any other materials required by the escrow holder.

SEC. 36. Section 1781.4 of the Health and Safety Code is amended to read:

1781.4. The deposit escrow account agreement between the applicant and the escrow agent shall include all of the following:

(a) The amount of the processing fee.

(b) A provision requiring that all deposits shall be placed into the deposit escrow account upon delivery.

(c) A provision requiring that monthly progress reports be sent by the escrow agent directly to the department, beginning the month after the deposit escrow account is opened and continuing through the month funds are released from escrow. These reports shall be prepared every month that there are any funds in the account and shall show each of the following in separate columns:

(1) The name and address of each depositor or resident.

(2) The designation of the living unit being provided.

(3) Any processing fee which is deposited into escrow.

(4) The total deposit required for the unit.

(5) The total entrance fee for the unit.

(6) Twenty percent of the total entrance fee.

(7) Each deposit payment made by or on behalf of the depositor and any refunds paid to the depositor.

(8) The unpaid balance for each depositor's deposit.

(9) The unpaid balance for each depositor's entrance fee.

(10) The current balance in the deposit escrow account for each depositor and the collective balance.

(11) The dollar amount, type, and maturity date of any cash equivalent paid by each depositor.

(d) A provision for investment of escrow account funds in a manner consistent with Section 1781.

(e) A provision for refunds to depositors in the manner specified by Section 1783.2.

(f) A provision regarding the payment of interest earned on the funds held in escrow in the manner specified in the applicant's deposit agreement.

(g) Release of deposit escrow account funds in the manner specified in Section 1783.3, including to whom payment of interest earned on the funds will be made.

(h) Representations by the escrow agent that it is not, and shall not be during the term of the deposit escrow account, a lender to the applicant or for the proposed continuing care retirement community, or a fiduciary for any lender or bondholder for that continuing care retirement community, unless approved by the department.

(i) If cash equivalents may be accepted as a deposit in lieu of cash, the deposit escrow account agreement shall also include all of the following:

(1) Authorization for the escrow agent to convert instruments to cash when they mature. The escrow agent may notify all financial institutions whose securities are held by the escrow agent that all interest and other payments due upon these instruments shall be paid to the escrow agent. The escrow agent shall collect, hold, invest, and disburse these funds as provided under the escrow agreement.

(2) Authorization for the escrow agent to deliver the instruments in its possession and release funds from escrow according to written directions from the applicant, consistent with the terms provided in the applicant's deposit escrow account agreement. The escrow agent shall distribute cash and other property to an individual depositor only upon either of the following occurrences:

(A) The depositor's written request to receive monthly payments of interest accrued on his or her deposits.

(B) Receipt of notice from the applicant to pay a refund to the depositor.

(3) A provision that the escrow agent shall maintain, at all times, adequate records showing the beneficial ownership of the instruments.

(4) A provision that the escrow agent shall have no responsibility or authority to initiate any transfer of the instruments or conduct any other transaction without specific written instructions from the applicant.

(5) A provision authorizing, instructing, and directing the escrow agent to do all of the following:

(A) Redeem and roll over matured investments into money market accounts or other department approved instruments with the escrow agent or an outside financial institution.

(B) Collect and receive interest, principal, and other things of value in connection with the instruments.

(C) Sign for the depositors any declarations, affidavits, certificates, and other documents that may be required to collect or receive payments or distributions with respect to the instruments.

SEC. 37. Section 1781.6 of the Health and Safety Code is amended to read:

1781.6. All changes to a deposit agreement or deposit escrow account agreement form shall be submitted to, and approved by, the department before use by the applicant.

SEC. 38. Section 1781.8 of the Health and Safety Code is amended to read:

1781.8. (a) Deposits held in escrow shall be placed in an interest bearing account or invested as provided under subdivision (e) of Section 1781.

(b) Interest, income, and other gains derived from deposits held in a deposit escrow account may not be released or distributed from the deposit escrow account except upon written approval of the department.

(c) Approval by the department for the release of earnings generated from funds held in escrow shall be based upon an assessment that funds remaining in the deposit escrow account will be sufficient to pay refunds and any interest promised to all depositors, as well as administrative costs owed to the escrow agent.

(d) When released by the department, interest earned by the funds in the deposit escrow account shall be distributed in accordance with the terms of the deposit agreement.

SEC. 39. Section 1781.10 of the Health and Safety Code is amended to read:

1781.10. No deposit or any other asset held in a deposit escrow account, shall be encumbered or used as collateral for any obligation of the applicant or any other person, unless the applicant obtains prior written approval from the department for the encumbrance or use as collateral. The department shall not approve any encumbrance or use as collateral under this section unless the encumbrance or use as collateral is expressly subordinated to the rights of depositors under this chapter to refunds of their deposits.

SEC. 40. Section 1782 of the Health and Safety Code is amended to read:

1782. (a) An applicant shall not begin construction on any phase of a continuing care retirement community without first obtaining a written acknowledgment from the department that all of the following prerequisites have been met:

(1) A completed application has been submitted to the department.

(2) A permit to accept deposits has been issued to the applicant or, in the case of continuing care retirement community renovation projects, the department has issued a written approval of the applicant's application.

(3) For new continuing care retirement communities, or construction projects adding new units to an existing continuing care retirement

community, deposits equal to at least 20 percent of each depositor's applicable entrance fee have been placed into escrow for each phase for at least 50 percent of the number of residential living units to be constructed.

(b) Applicants shall notify depositors in writing when construction is commenced.

(c) For purposes of this chapter only, construction shall not include site preparation, demolition, or the construction of model units.

SEC. 41. Section 1783 of the Health and Safety Code is amended to read:

1783. (a) (1) An applicant proposing to convert an existing building to continuing care use shall comply with all the application requirements in Section 1779.4 identified by the department as necessary for the department to assess the feasibility of the proposed continuing care retirement community or conversion.

(2) If the proposed continuing care retirement community is already occupied and only a portion of the existing residential units will be converted into continuing care units, the department may modify the presale requirements of paragraph (3) of subdivision (a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.

(b) Any applicant proposing to convert an existing building into continuing care units shall indicate the portion of the facility to be used for continuing care contract services. The continuing care allocation specified by the applicant shall be reflected in all financial and marketing studies and shall be used to determine the applicant's compliance with the percentage requirements stated in paragraph (3) of subdivision (a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.

SEC. 42. Section 1783.2 of the Health and Safety Code is amended to read:

1783.2. (a) An escrow agent shall refund to the depositor all amounts required by the depositor's deposit agreement upon receiving written notice from the applicant that a depositor has canceled the deposit agreement. Refunds required by this subdivision shall be paid to the depositor within 10 days after the depositor gives notice of cancellation to the applicant.

(b) Depositors who have deposited more than one thousand dollars ($1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, shall not be entitled to a refund of their deposit until any of the following occurs:

(1) The continuing care retirement community is opened for operation.

(2) Another depositor has reserved the canceling depositor's specific residential unit and paid the necessary deposit.

(3) The depositor no longer meets financial or health requirements for admission.

SEC. 43. Section 1783.3 is added to the Health and Safety Code, to read:

1783.3. (a) In order to seek a release of escrowed funds, the applicant shall petition in writing to the department and certify to each of the following:

(1) The construction of the proposed continuing care retirement community or phase is at least 50 percent completed.

(2) At least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any unit for which a refund is pending may not be counted toward that 60-percent requirement.

(3) Deposits made with cash equivalents have been either converted into, or substituted with, cash or held for transfer to the provider. A cash equivalent deposit may be held for transfer to the provider, if all of the following conditions exist:

(A) Conversion of the cash equivalent instrument would result in a penalty or other substantial detriment to the depositor.

(B) The provider and the depositor have a written agreement stating that the cash equivalent will be transferred to the provider, without conversion into cash, when the deposit escrow is released to the provider under this section.

(C) The depositor is credited the amount equal to the value of the cash equivalent.

(4) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.

(5) The applicant has received a commitment for any permanent mortgage loan or other long-term financing.

(b) The department shall instruct the escrow agent to release to the applicant all deposits in the deposit escrow account when all of the following requirements have been met:

(1) The department has confirmed the information provided by the applicant pursuant to subdivision (a).

(2) The department, in consultation with the Continuing Care Advisory Committee, has determined that there has been substantial compliance with projected annual financial statements that served as a basis for issuance of the permit to accept deposits.

(3) The applicant has complied with all applicable licensing requirements in a timely manner.

(4) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

(5) The applicant has complied with any additional reasonable requirements for release of funds placed in the deposit escrow accounts, established by the department under Section 1785.

(c) The escrow agent shall release the funds held in escrow to the applicant only when the department has instructed it to do so in writing.

(d) When an application describes different phases of construction that will be completed and commence operating at different times, the department may apply the 50 percent construction completion requirement to any one or group of phases requested by the applicant, provided the phase or group of phases is shown in the applicant's projections to be economically viable.

SEC. 44. Section 1784 of the Health and Safety Code is amended to read:

1784. (a) If construction of the proposed continuing care retirement community, or applicable phase, has not commenced within 36 months from the date the permit to accept deposits is issued, an applicant may request an extension of the permit to accept deposits. The request for extension shall be made to the department in writing and shall include the reasons why construction of the proposed continuing care retirement community was not commenced within the required 36-month period. The request for extension shall also state the new estimated date for commencement of construction.

(b) In response to a request for an extension, the department may do one of the following:

(1) If the department determines there is satisfactory cause for the delay in commencement of construction of the proposed continuing care retirement community or applicable phase, the department may extend the permit to accept deposits for up to one year.

(2) If the department determines that there is no satisfactory cause for the delay, the department may instruct the escrow agent to refund to depositors all deposits held in escrow, plus any interest due under the terms of the deposit subscription agreements, and require the applicant to file a new application and application fee. The applicant shall also refund all processing fees paid by the depositors.

(c) Within 10 calendar days the applicant shall notify each depositor of the department's approval or denial of the extension, of any expiration of the permit to accept deposits and of any right to a refund of their deposits.

SEC. 45. Section 1785 of the Health and Safety Code is amended to read:

1785. (a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department, after consultation and upon consideration of the

recommendations of the Continuing Care Advisory Committee, may take any of the following actions:

(1) Cancel the permit to accept deposits and require that all funds in escrow be returned to depositors immediately.

(2) Increase the required percentages of construction completed, units reserved, or entrance fees to be deposited as required under Sections 1782, 1783.3, 1786, and 1786.2.

(3) Increase the reserve requirements under this chapter.

(b) Prior to taking any actions specified in subdivision (a), the department shall give the applicant an opportunity to submit a feasibility study from a consultant in the area of continuing care, approved by the department, to determine whether in his or her opinion the proposed continuing care retirement community is still viable, and if so, to submit a plan of correction. The department, in consultation with the committee, shall determine if the plan is acceptable.

(c) In making its determination, the department shall take into consideration the overall performance of the proposed continuing care retirement community to date.

(d) If deposits have been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from depositors or residents.

(e) The department may require the applicant to notify all depositors and, if applicable, all residents, of any actions required by the department under this section.

SEC. 46. Section 1786 of the Health and Safety Code is amended to read:

1786. (a) The department shall issue a provisional certificate of authority when an applicant has done all of the following:

(1) Complied with the approved marketing plans.

(2) Met and continues to meet the requirements imposed under subdivision (a) of Section 1783.3. The issuance of the provisional certificate of authority shall not require, and shall not be dependent upon the release of escrowed funds. Release of escrowed funds shall be governed by Section 1783.3.

(3) Completed construction of the continuing care retirement community or applicable phase.

(4) Obtained the required licenses.

(5) Paid the remainder of the application fee.

(6) Executed a permanent mortgage loan or other long-term financing.

(7) Provided the department with a recorded copy of the Notice of Statutory Limitation on Transfer required by subdivision (aa) of Section 1779.4.

(8) Met all applicable provisions of this chapter.

(b) The provisional certificate of authority shall expire 12 months after issuance unless both of the following occur:

(1) No later than 60 days prior to the expiration of the provisional certificate of authority, the provider petitions the department and demonstrates good cause in writing for an extension of the provisional certificate of authority.

(2) The department determines that the provider is capable of meeting the requirements of Section 1786.2 during the extension period.

(c) The department shall exercise its discretion to determine the length of the extension period.

(d) After the provisional certificate of authority is issued providers may continue to take deposits by modifying the deposit agreement as appropriate. The new deposit agreement shall clearly state the rights of the depositor and the provider. The applicant shall submit the agreements to the department for review and approval prior to use. A provider that holds a provisional certificate of authority or certificate of authority may accept fees paid by potential residents to be placed on a waiting list without using a deposit agreement. These waiting list fees may not exceed five hundred dollars ($500), and shall be refunded to the potential resident upon written request.

(e) All holders of a provisional certificate of authority shall request in writing a certificate of authority when the requirements of Section 1786.2 have been met.

SEC. 47. Section 1786.2 of the Health and Safety Code is amended to read:

1786.2. (a) The department shall not issue a certificate of authority to an applicant or a provider, until the department determines that each of the following has occurred:

(1) A provisional certificate of authority has been issued or all of the requirements for a provisional certificate of authority have been satisfied. In the case of an application for a new certificate of authority due to an organizational change, if the continuing care retirement community is financially sound and operating in compliance with this chapter, it shall be sufficient for the purposes of this paragraph that the department has approved the application in writing.

(2) One of the following requirements has been met:

(A) At a minimum, continuing care contracts have been executed for 80 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee.

(B) At a minimum, continuing care contracts have been executed for 70 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider has submitted an updated financial and marketing plan,

satisfactory to the department, demonstrating that the proposed continuing care retirement community will be financially viable.

(C) At a minimum, continuing care contracts have been executed for 50 percent of the total residential living units in the continuing care retirement community, with payment in full of the entrance fee, and the provider furnishes and maintains a letter of credit or other security, satisfactory to the department, sufficient to bring the total amount of payments to a level equivalent to 80 percent of the total entrance fees for the entire continuing care retirement community.

(3) A minimum five-year financial plan of operation remains satisfactory to the department.

(4) Adequate reserves exist as required by Sections 1792 and 1792.6. For a new continuing care retirement community without an operating history, the department may approve calculation of required reserves on a pro forma basis in conjunction with compliance with approved marketing plans.

(5) All applicable provisions of this chapter have been met.

(b) When issued, the certificate of authority, whether full or conditioned, shall remain in full force unless forfeited by operation of law under Section 1793.7, inactivated under Section 1793.8, or suspended or revoked by the department pursuant to Section 1793.21.

(c) The provider shall display the certificate of authority in a prominent place within the continuing care retirement community.

SEC. 48. Section 1787 of the Health and Safety Code is amended to read:

1787. (a) All continuing care contracts shall be in writing and shall contain all the information required by Section 1788.

(b) All continuing care contract forms, including all addenda, exhibits, and any other related documents, incorporated therein, as well as any modification to these items, shall be approved by the department prior to their use.

(c) The department shall approve continuing care contract forms that comply with this chapter. The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval by the department. To the extent that this chapter conflicts with Chapter 3.2 (commencing with Section 1569), this chapter shall prevail.

(d) A continuing care contract approved by the department shall constitute the full and complete agreement between the parties.

(e) More than one continuing care contract form may be used by a provider if multiple program options are available.

(f) All text in continuing care contract forms shall be printed in at least 10-point typeface.

(g) A clearly legible copy of the continuing care contract, executed by each provider named on the provisional certificate of authority or the

certificate of authority, the resident, and any transferor, shall be furnished with all required or included attachments to the resident at the time the continuing care contract is executed. A copy shall also be furnished within 10 calendar days to any transferor who is not a resident.

(h) The provider shall require a written acknowledgment from the resident (and any transferor who is not a resident) that the executed copy of the continuing care contract and attachments have been received.

(i) The continuing care contract shall be an admissions agreement for purposes of the residential care facility for the elderly and long-term health care facility requirements and shall state the resident's entitlement to receive these levels of care. The continuing care contract may state the entitlement for skilled nursing care in accordance with the provisions of law governing admissions to long-term health care facilities in effect at the time of admission to the skilled nursing facility. The parties may agree to the terms of nursing facility admission at the time the continuing care contract is executed, or the provider may present an exemplar of the then-current nursing facility admission agreement and require the resident to execute the form of agreement in effect at the time of admission to the nursing facility. The terms shall include the nursing fee, or the method of determining the fee, at the time of the execution of the continuing care contract, the services included in and excluded from the fee, the grounds for transfers and discharges, and any other terms required to be included under applicable law.

(j) Only the skilled nursing admission agreement sections of continuing care contracts which cover long-term health care facility services are subject to Chapter 3.95 (commencing with Section 1599.60). The provider shall use a skilled nursing admission nursing agreement that complies with the requirements of Chapter 3.95 (commencing with Section 1599.85).

SEC. 49. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) Any continuing care contracts shall contain all of the following:

(1) The legal name and address of each provider.

(2) The name and address of the continuing care retirement community.

(3) The resident's name and the identity of the unit the resident will occupy.

(4) If there is a transferor other than the resident, the transferor shall be a party to the contract and the transferor's name and address shall be specified.

(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 or the obligations specified in the continuing care contract, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the resident that the organization is not financially responsible.

(6) The date the continuing care contract is signed by the resident and, where applicable, any other transferor.

(7) The duration of the continuing care contract.

(8) A list of the services that will be made available to the resident as required to provide the appropriate level of care. The list of services shall include the services required as a condition for licensure as a residential care facility for the elderly, including all of the following:

(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) Assisted living services.

(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 and involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall include provisions addressing all of the following circumstances under which transfer may be authorized:

(A) When, in the opinion of the continuing care retirement community management, a physician, appropriate specialist, or licensing official in consultation with the resident and appropriate representative, if any, any of the following conditions exists:

(i) The resident is nonambulatory. The definition of ''nonambulatory,'' as provided in Section 13131, shall either be stated in full in the continuing care contract or be cited. If Section 13131 is cited, a copy of the statute shall be made available to the resident, either as an attachment to the continuing care contract or by specifying that it

will be provided upon request. If a nonambulatory resident occupies a room that has a fire clearance for nonambulatory residence, transfer shall not be necessary.

(ii) The 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) The resident's condition or needs require the resident's transfer to an assisted living care unit or skilled nursing facility for more efficient care or to protect the health of other residents, or because the level of care required by the resident exceeds that which may be lawfully provided in the living unit.

(iv) The resident's condition or needs require the resident's transfer to a nursing facility, hospital, or other facility, and the provider has no facilities available to provide that level of care.

(B) Transfer of a second resident when a shared accommodation arrangement is terminated.

(C) Transfer is requested or required, by the provider or the resident, for any other reason.

(11) Provisions describing any changes in the resident's monthly fee and any changes in the entrance fee refund payable to the resident that will occur if the resident transfers from any unit.

(12) The provider's continuing obligations if any, in the event a resident is transferred from the continuing care retirement community to another facility.

(13) The provider's obligations, if any, to resume care upon the resident's return after a transfer from the continuing care retirement community.

(14) The provider's obligations to provide services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident must permanently release his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement specifying each item's value at the time of transfer, and how the value was ascertained.

(A) An itemized receipt which includes the information described above is acceptable if incorporated as a part of the continuing care contract.

(B) When real property is or will be transferred, the continuing care contract shall include a statement that the deed or other instrument of conveyance shall specify that the real property is conveyed pursuant to a continuing care contract and may be subject to rescission by the

transferor within 90 days from the date that the resident first occupies the residential unit.

(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 describe how any refund of entrance fees is allocated.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts that require a monthly care fee or other periodic payment, the continuing care contract shall include the following:

(A) A statement 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) A provision specifying whether payment will be made in advance or after services have been provided.

(D) A provision specifying the provider will adjust monthly care fees for the resident's support, maintenance, board, or lodging, when a resident requires medical attention while away from the continuing care retirement community.

(E) A provision specifying whether a credit or allowance will be given to a resident who is absent from the continuing care retirement community or from meals. This provision shall also state, when applicable, that the credit may be permitted at the discretion or by special permission of the provider.

(22) All continuing care contracts that include monthly care fees shall address changes in monthly care fees by including either of the following provisions:

(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 care fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) A provision requiring that the provider give written notice to the resident at least 30 days in advance of any change in the resident's monthly care fees or in the price or scope of any component of care or other services.

(24) 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 the continuing care retirement community property is encumbered by a security interest that is senior to any claims the residents may have to enforce continuing care contracts, a provision shall advise the residents that any claims they may have under the continuing care contract are subordinate to the rights of the secured lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a 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 a result, 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 signatures of the resident and, if applicable, the transferor, that provides as follows: ''You, the resident or transferor, may cancel the transaction without cause at any time within 90 days from the date you first occupy your living unit. 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 upon 30 days' written notice by the provider without cause, or that the provider waives this right.

(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, after the cancellation period, a provider may unilaterally terminate the continuing care contract only if the provider has good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a continuing care contract to be terminated 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 termination 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) The provision required by this paragraph shall also state that the provider shall not 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' organization or association.

(C) Nothing in this paragraph diminishes 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 to the resident is required for a unilateral termination of the continuing care contract by the provider.

(32) A statement concerning the length of notice that a resident is required to give the provider to voluntarily terminate the continuing care contract after the cancellation period.

(33) The policy or terms for refunding any portion of the entrance fee, in the event of cancellation, termination, or death. Every continuing care contract that provides for a refund of all or a part of the entrance fee shall also do all of the following:

(A) Specify the amount, if any, the resident has paid or will pay for upgrades, special features, or modifications to the resident's unit.

(B) State that if the continuing care contract is cancelled or terminated by the provider, the provider shall do both of the following:

(i) Amortize the specified amount at the same rate as the resident's entrance fee.

(ii) Refund the unamortized balance to the resident at the same time the provider pays the resident's entrance fee refund.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (*l*) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are

strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: ''Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider's failure to provide this care and supervision.''

(b) A life care contract shall also provide that:

(1) All levels of care, including acute care and physicians' and surgeons' services will be provided to a resident.

(2) Care will be provided for the duration of the resident's life unless the life care contract is canceled or terminated by the provider during the cancellation period or after the cancellation period for good cause.

(3) A comprehensive continuum of care will be provided to the resident, including skilled nursing, in a facility under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Monthly care fees will not be changed based on the resident's level of care or service.

(5) A resident who becomes financially unable to pay his or her monthly care fees shall be subsidized provided the resident's financial need does not arise from action by the resident to divest the resident of his or her assets.

(c) Continuing care contracts may include provisions that do any of the following:

(1) Subsidize a resident who becomes financially unable to pay for his or her monthly care fees at some future date. If a continuing care contract provides for subsidizing a resident, it may also provide for any of the following:

(A) The resident shall apply for any public assistance or other aid for which he or she is eligible and that the provider may apply for assistance on behalf of the resident.

(B) The provider's decision shall be final and conclusive regarding any adjustments to be made or any action to be taken regarding any charitable consideration extended to any of its residents.

(C) The provider is entitled to payment for the actual costs of care out of any property acquired by the resident subsequent to any adjustment extended to the resident under paragraph (1), or from any other property of the resident which the resident failed to disclose.

(D) The provider may pay the monthly premium of the resident's health insurance coverage under Medicare to ensure that those payments will be made.

(E) The provider may receive an assignment from the resident of the right to apply for and to receive the benefits, for and on behalf of the resident.

(F) The provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is reasonably available from any governmental agency, or any private insurance.

(G) Any refund due to the resident at the termination of the continuing care contract may be offset by any prior subsidy to the resident by the provider.

(2) Limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In these cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in a medical report attached to and made a part of the continuing care contract.

(3) Identify legal remedies which may be available to the provider if the resident makes any material misrepresentation or omission pertaining to the resident's assets or health.

(4) Restrict transfer or assignments of the resident's rights and privileges under a continuing care contract due to the personal nature of the continuing care contract.

(5) Protect the provider's ability to waive a resident's breach of the terms or provisions of the continuing care contract in specific instances without relinquishing its right to insist upon full compliance by the resident with all terms or provisions in the contract.

(6) Provide that the resident shall reimburse the provider for any uninsured loss or damage to the resident's unit, beyond normal wear and tear, resulting from the resident's carelessness or negligence.

(7) Provide that the resident agrees to observe the off-limit areas of the continuing care retirement community designated by the provider for safety reasons. The provider may not include any provision in a continuing care contract that absolves the provider from liability for its negligence.

(8) Provide 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 as a result of the injury.

(9) Provide 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) Require the resident's cooperation and assistance in the diligent prosecution of any claim or action against any third party.

(11) Provide for the appointment of a conservator or guardian by a court with jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Allow a provider, whose property is tax exempt, to charge the resident on a pro rata basis property taxes, or in-lieu taxes, that the provider is required to pay.

(13) Make any other provision approved by the department.

(d) A copy of the resident's rights as described in Section 1771.7 shall be attached to every continuing care contract.

(e) 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 obligations, the financial statement attached to the continuing care contract shall include all of the following:

(1) A disclosure that the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(2) A disclosure that the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(3) A copy of the approved financial plan for meeting the reserve requirements.

(4) Any other supplemental statements or attachments necessary to accurately represent the provider's financial ability to fulfill its continuing care contract obligations.

(f) A schedule of the average monthly care fees charged to residents for each type of residential living unit for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. The provider shall update this schedule 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.

(g) If any continuing care contract provides for a health insurance policy for the benefit of the resident, the provider shall attach to the continuing care contract a binder complying with Sections 382 and 382.5 of the Insurance Code.

(h) The provider shall attach to every continuing care contract a completed form in duplicate, captioned ''Notice of Cancellation.'' The

notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

''NOTICE OF CANCELLATION'' (date)

Your first date of occupancy under this contract is: _____

''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. Any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated to pay a reasonable processing fee to cover costs and to pay for 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 you took possession.

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 _____
(Resident or Transferor's signature)''

SEC. 50. Section 1788.2 of the Health and Safety Code is amended to read:

1788.2. (a) A continuing care contract may be canceled without cause by written notice from either party within 90 days from the date of the resident's initial occupancy.

(b) For all continuing care contracts, death of the resident before or during the cancellation period shall constitute a cancellation of the continuing care contract under subdivision (a), unless the continuing care contract includes specific provisions otherwise.

(c) The cancellation period and the associated refund obligations shall apply as follows:

(1) To all executed continuing care contracts regarding a unit in a continuing care retirement community that is not an equity continuing care retirement community.

(2) To continuing care contracts executed in conjunction with a purchase of an equity interest from a provider but not to continuing care contracts executed in conjunction with sales of an equity interest by one resident to another.

(d) The following fees may be charged before or during the 90-day cancellation period:

(1) If possession of the living unit in a continuing care retirement community that is not an equity continuing care retirement community is returned to the provider in substantially the same condition as when received, the resident's only obligations shall be to pay a reasonable fee to cover costs and to pay the reasonable value of services rendered pursuant to the canceled continuing care contract.

(2) Equity project providers may impose a resale fee on sellers. For contracts entered into after January 1, 1996, upon the cancellation of a continuing care contract executed in conjunction with the purchase of an equity interest from the provider, the provider may charge a resale fee not to exceed the excess of the gross resale price of the equity interest over the purchase price paid by the resident or on behalf of the resident for the interest.

(e) No resale fee shall exceed the sum of 10 percent of either the original or resale price of the equity interest and 100 percent of the excess if any, of the gross resale price of the equity interest over the purchase price paid by the resident or on behalf of the resident for the interest if either of the following applies:

(1) The continuing care contract involved the purchase of an equity interest from the provider and is terminated after the cancellation period.

(2) The continuing care contract involved the purchase of an equity interest from another resident and is terminated at any time.

(f) For purposes of this section, ''gross resale price'' means the resale price before any deductions for resale fees, transfer taxes, real estate commissions, periodic fees, late charges, interest, escrow fees, or any other fees incidental to the sale of real property.

(g) This section may not be construed to limit the provider's ability to withhold delinquent periodic fees, late charges, accrued interest, or assessments from the sale proceeds, as provided by the continuing care contract or the real estate documents governing the equity continuing care retirement community.

SEC. 51. Section 1788.4 of the Health and Safety Code is amended to read:

1788.4. (a) During the cancellation period, the provider shall pay all refunds owed to a resident within 14 calendar days after a resident makes possession of the living unit available to the provider.

(b) After the cancellation period, any refunds due to a resident under a continuing care contract shall be paid within 14 calendar days after a resident makes possession of the living unit available to the provider or 90 calendar days after death or receipt of notice of termination, whichever is later.

(c) In nonequity projects, if the continuing care contract is canceled by either party during the cancellation period or terminated by the provider after the cancellation period, the resident shall be refunded the difference between the total amount of entrance, monthly, and optional fees paid and the amount used for care of the resident.

(d) If a resident has paid additional amounts for upgrades, special features, or modifications to the living unit and the provider terminates the resident's continuing care contract, the provider shall amortize those additional amounts at the same rate as the entrance fee and shall refund the unamortized balance to the resident.

(e) 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 to be a refund and may not be characterized or advertised as a refund. The lump sum payment shall be paid to the resident within 14 calendar days after resale of the unit.

SEC. 52. Section 1789 of the Health and Safety Code is amended to read:

1789. (a) A provider shall notify the department and obtain its approval before making any changes to any of the following: its name; its business structure or form of doing business; the overall management of its continuing care retirement community; or the terms of its financing.

(b) The provider shall give written notice of proposed changes to the department at least 60 calendar days in advance of making the changes described in this section.

(c) This notice requirement does not apply to routine facility staff changes.

(d) Within 10 calendar days of submitting notification to the department of any proposed changes under subdivision (a), the provider

shall notify the resident association of the proposed changes in the manner required by subdivision (e) of Section 1779.

SEC. 53. Section 1789.1 is added to the Health and Safety Code, to read:

1789.1. (a) Before executing a deposit agreement or continuing care agreement, or receiving any payment from a depositor or prospective resident, a provider shall deliver to the other parties in the deposit or continuing care agreement a disclosure statement in the form prescribed by the department.

(b) The department shall issue a disclosure statement form that shall generally require disclosure, at a minimum, of the following information:

(1) General information regarding the provider and the continuing care retirement community, including at a minimum all of the following:

(A) The continuing care retirement community's name, address, and telephone number.

(B) The type of ownership, names of the continuing care retirement community's owner and operator, the names of any affiliated facilities, and any direct religious affiliation.

(C) Whether accredited and by what organization.

(D) The year the continuing care retirement community opened and the distance to the nearest shopping center and hospital.

(E) Whether the continuing care retirement community offers life care contracts or continuing care contracts, and whether the continuing care retirement community is single story or multistory.

(F) The number of the continuing care retirement community's studio units, one bedroom units, two bedroom units, cottages or houses, assisted living beds, and skilled nursing beds.

(G) The continuing care retirement community's percentage occupancy at the provider's most recent fiscal yearend.

(H) The form of contracts offered, the range of entrance fees, the percentages of a resident's entrance fees that may be refunded, and the health care benefits included in contract.

(I) Any age and insurance requirements for admission.

(J) A listing of common area amenities and other services included with the monthly service fee, and a listing of those amenities and services that are available for an additional charge.

(K) The number of meals each day included in the monthly service fee, the number of meals available for an extra charge, the frequency of housekeeping services, and additional cost, if any , for housekeeping services.

(2) Income from operations during the most recent five years for which audited financial statements have been completed, including all of the following:

(A) Operating income (excluding amortization of entrance fee income).

(B) Operating expense (excluding depreciation, amortization, and interest).

(C) Net income from operations.

(D) Interest expense.

(E) Unrestricted contributions.

(F) Nonoperating income or expense, excluding extraordinary items.

(G) Net income or loss before entrance fees.

(H) Net cash-flow from entrance fees, that is the total deposits less refunds.

(3) The name of the lender, outstanding balance, interest rate, date of origination, date of maturity, and amortization period for all secured debt.

(4) Financial ratios for each of the three most recent years for which audited financial statements have been prepared, including all of the following: debt-to-asset ratio, operating ratio, debt service coverage ratio, and days cash-on-hand. The formulas for each ratio shall be determined by the department after consultation with the Continuing Care Advisory Committee.

(5) The average monthly service fees charged during the most recent five years, and the percentage changes in the average from year to year, for each of the following: studio units, one bedroom units, two bedroom units, cottages and houses, assisted living units, and skilled nursing units.

(6) Comments from the provider explaining any of the information included in the disclosure form.

(c) Each provider shall update its disclosure statement at least annually when it completes its annual audited financial statements. Each provider shall file its updated version of the disclosure statement with the department not later than the final filing date for its annual report.

(d) The form prescribed by the department under this section shall be used by providers to comply with the requirements of this section.

SEC. 54. Section 1789.2 of the Health and Safety Code is amended to read:

1789.2. (a) A provider shall provide the department with written notice at least 90 calendar days prior to closing any transaction that results in an encumbrance or lien on a continuing care retirement community property or its revenues.

(b) The written notice required by this section shall include all of the following:

(1) A description of the terms and amount of the proposed transaction.

(2) An analysis of the sources of funds for repayment of principal and interest.

(3) An analysis of the impact of the proposed transaction on monthly care fees.

(4) An analysis of the impact that the proposed encumbrance would have on assets available for liquid reserves required by Section 1792, and refund reserves required by Section 1792.6.

(c) Within seven calendar days of receipt of notice of proposed changes, the department shall acknowledge receipt of the notice in writing.

(d) Within 30 calendar days following its receipt of the notice, the department shall inform the provider in writing whether additional materials are required to evaluate the transaction.

(e) Within 90 calendar days following its receipt of additional materials, the department shall inform the provider of its approval or denial of the proposed transaction.

(f) Providers shall not execute the proposed financial transaction for which notice has been given pursuant to subdivision (a) without the department's written authorization unless either the 30-day response period or the 90 calendar day period for the department's review of the provider's request has expired without any response by the department.

(g) If the department determines that the proposed financial transaction will materially increase monthly care fees or impair the provider's ability to maintain required reserves, the department may:

(1) Refuse to approve the transaction.

(2) Record a notice of lien on the provider's property pursuant to Section 1793.15 after notifying the provider and giving the provider an opportunity to withdraw the planned transaction.

(3) Take both actions and any other action that it determines is necessary to protect the best interests of the residents.

(h) Within 10 calendar days of submitting notification to the department of any proposed encumbrance to the community property, the provider shall notify the resident governing body or association of the proposed encumbrance in the manner required by subdivision (e) of Section 1779.

SEC. 55. Section 1789.4 of the Health and Safety Code is amended to read:

1789.4. (a) A provider for a continuing care retirement community shall obtain approval from the department before consummating any sale or transfer of the continuing care retirement community or any interest in that community, other than sale of an equity interest in a unit to a resident or other transferor.

(b) The provider shall provide written notice to the department at least 120 calendar days prior to consummating the proposed transaction.

(c) The notice required by this section shall include all of the following:

(1) The identity of the purchaser.

(2) A description of the terms of the transfer or sale, including the sales price.

(3) A plan for ensuring performance of the existing continuing care contract obligations.

(d) The provider shall give written notice to all continuing care contract residents and depositors 120 calendar days prior to the sale or transfer. The notice shall do all of the following:

(1) Describe the parties.

(2) Describe the proposed sale or transfer.

(3) Describe the arrangements for fulfilling continuing care contract obligations.

(4) Describe options available to any depositor or resident who does not wish to have his or her contract assumed by a new provider.

(5) Include an acknowledgment of receipt of the notice to be signed by the resident.

(e) Unless a new provider assumes all of the continuing care obligations of the selling provider at the close of the sale or transfer, the selling provider shall set up a trust fund or secure a performance bond to ensure the fulfillment of all its continuing care contract obligations.

(f) The purchaser shall make applications for, and obtain, the appropriate licenses and a certificate of authority before executing any continuing care contracts or assuming the selling provider's continuing care contract obligations.

SEC. 56. Section 1789.6 of the Health and Safety Code is amended to read:

1789.6. A provider shall record with the county recorder a ''Notice of Statutory Limitation on Transfer'' for each community as required by subdivision (aa) of Section 1779.4 and Section 1786.

SEC. 57. Section 1789.8 of the Health and Safety Code is amended to read:

1789.8. Each provider shall obtain and maintain in effect insurance or a fidelity bond for each agent or employee, who, in the course of his or her agency or employment, has access to any substantial amount of funds. This requirement is separate from the bonding requirements of residential care facility for the elderly regulations.

SEC. 57.1. Section 1792 of the Health and Safety Code is repealed.

SEC. 57.15. Section 1792 is added to the Health and Safety Code, to read:

1792. (a) A provider shall maintain at all times qualifying assets as a liquid reserve in an amount that equals or exceeds the sum of the following:

(1) The amount the provider is required to hold as a debt service reserve under Section 1792.3.

(2) The amount the provider must hold as an operating expense reserve under Section 1792.4.

(b) The liquid reserve requirement described in this section is satisfied when a provider holds qualifying assets in the amount required. Except as may be required under subdivision (d), a provider is not required to set aside, deposit into an escrow, or otherwise restrict the assets it holds as its liquid reserve.

(c) A provider shall not allow the amount it holds as its liquid reserve to fall below the amount required by this section. In the event the amount of a provider's liquid reserve is insufficient, the provider shall prudently eliminate the deficiency by increasing its assets qualifying under Section 1792.2.

(d) The department may increase the amount a provider is required to hold as its liquid reserve or require that a provider immediately place its liquid reserve into an escrow account meeting the requirements of Section 1781 if the department has reason to believe the provider is any of the following:

(1) Insolvent.

(2) In imminent danger of becoming insolvent.

(3) In a financially unsound or unsafe condition.

(4) In a condition such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

SEC. 57.2. Section 1792.1 is added to the Health and Safety Code, to read:

1792.1. (a) For providers that have voluntarily and permanently discontinued entering into continuing care contracts, the department may allow a reduced liquid reserve amount if the department finds that the reduction is consistent with the financial protections imposed by this article. The reduced liquid reserve amount shall be based upon the percentage of residents at the continuing care retirement community who have continuing care contracts.

(b) For providers holding a certificate of authority as of January 1, 2001, the liquid reserve requirement described in Section 1792 shall be phased in over the 24-month period following January 1, 2001. A provider holding a certificate of authority shall comply with the liquid reserve requirements if all of the following apply:

(1) During the first 12 months following January 1, 2001, the provider holds as its liquid reserve, qualifying assets that equal or exceed 25 percent of the provider's debt reserve obligation; plus qualifying assets that equal or exceed 25 percent of the provider's operating expense reserve obligation.

(2) During the 13th through 24th months following January 1, 2001, the provider holds as its liquid reserve, qualifying assets that equal or exceed 50 percent of the provider's debt reserve obligation; plus qualifying assets that equal or exceed 50 percent of the provider's operating expense reserve obligation.

(3) After the 24 months following January 1, 2001, the provider holds as its liquid reserve qualifying assets in the amount required by Section 1792.

(c) Providers who are unable to satisfy the debt service reserve or operating expense reserve requirements during the 24-month period described in subdivision (b) may apply to the department for an extension of the time to comply with those reserve requirements. The department shall grant a one-year extension request to a provider upon its showing that an extension is necessary and consistent with protecting the financial soundness of the provider.

SEC. 57.21. Section 1792.2 of the Health and Safety Code is repealed.

SEC. 57.25. Section 1792.2 is added to the Health and Safety Code, to read:

1792.2. (a) A provider shall satisfy its liquid reserve obligation with qualifying assets. Qualifying assets are:

(1) Cash.

(2) Cash equivalents as defined in paragraph (4) of subdivision (c) of Section 1771.

(3) Investment securities, as defined in paragraph (2) of subdivision (i) of Section 1771.

(4) Equity securities, including mutual funds, as defined in paragraph (7) of subdivision (e) of Section 1771.

(5) Lines of credit and letters of credit that meet the requirements of this paragraph. The line of credit or letter of credit shall be issued by a state or federally chartered financial institution approved by the department or whose long-term debt is rated in the top three long-term debt rating categories by either Moody's Investors Service, Standard and Poor's Corporation, or a recognized securities rating agency acceptable to the department. The line of credit or letter of credit shall obligate the financial institution to furnish credit to the provider.

(A) The terms of the line of credit or letter of credit shall at a minimum provide both of the following:

(i) The department's approval shall be obtained by the provider and communicated in writing to the financial institution before any modification.

(ii) The financial institution shall fund the line of credit or letter of credit and pay the proceeds to the provider no later than four business days following written instructions from the department that, in the sole

judgment of the department, funding of the provider's minimum liquid reserve is required.

(B) The provider shall provide written notice to the department at least 14 days before the expiration of the line of credit or letter of credit if the term has not been extended or renewed by that time. The notice shall describe the qualifying assets the provider will use to satisfy the liquid reserve requirement when the line of credit or letter of credit expires.

(C) A provider may satisfy all or a portion of its liquid reserve requirement with the available and unused portion of a qualifying line of credit or letter of credit.

(6) For purposes of satisfying all or a portion of a provider's debt service reserve requirement described in Section 1792.3, restricted assets that are segregated or held in a separate account or escrow as a debt service reserve under the terms of the provider's long-term debt instruments are qualifying assets, subject to all of the following conditions:

(A) The assets are restricted by the debt instrument so that they may be used only to pay principal, interest, and credit enhancement premiums.

(B) The provider furnishes to the department a copy of the agreement under which the restricted assets are held and certifies that it is a correct and complete copy. The provider, escrow holder, or other entity holding the assets must agree to provide to the department any information the department may request concerning the debt service reserve it holds.

(C) The market value, or guaranteed value, if applicable, of the restricted assets, up to the amount the provider must hold as a debt reserve under Section 1792.3, will be included as part of the provider's liquid reserve.

(D) The restricted assets described in this paragraph will not reduce or count towards the amount the provider must hold in its liquid reserve for operating expenses.

(7) For purposes of satisfying all or a portion of a provider's operating expense reserve requirement described in Section 1792.4, restricted assets that are segregated or held in a separate account or escrow as a reserve for operating expenses, are qualifying assets subject to all of the following conditions:

(A) The governing instrument restricts the assets so that they may be used only to pay operating costs when operating funds are insufficient.

(B) The provider furnishes to the department a copy of the agreement under which the assets are held, certified by the provider to be a correct and complete copy. The provider, escrow holder, or other entity holding the assets shall agree to provide to the department any information the department may request concerning the account.

(C) The market value, or the guaranteed value, if applicable, of the restricted assets, up to the amount the provider is required to hold as an operating expense reserve under Section 1792.4, will be included as part of the provider's liquid reserve.

(D) The restricted assets described in this paragraph shall not reduce or count towards the amount the provider is required to hold in its liquid reserve for long-term debt.

(b) Except as otherwise provided in this subdivision, the assets held by the provider as its liquid reserve may not be subject to any liens, charges, judgments, garnishments, or creditors' claims and may not be hypothecated, pledged as collateral, or otherwise encumbered in any manner. A provider may encumber assets held in its liquid reserve as part of a general security pledge of assets or similar collateralization that is part of the provider's long-term capital debt covenants and is included in the provider's long-term debt indenture or similar instrument.

SEC. 57.3. Section 1792.3 is added to the Health and Safety Code, to read:

1792.3. (a) Each provider shall include in its liquid reserve a reserve for its long-term debt obligations in an amount equal to the sum of all of the following:

(1) All regular principal and interest payments, as well as credit enhancement premiums, paid by the provider during the immediately preceding fiscal year on account of any fully amortizing long-term debt owed by the provider. If a provider has incurred new long-term debt during the immediately preceding fiscal year, the amount required by this paragraph for that debt is 12 times the provider's most recent monthly payment on the debt.

(2) Facility rental or leasehold payments, and any related payments such as lease insurance, paid by the provider during the immediately preceding fiscal year.

(3) All payments paid by the provider during the immediately preceding fiscal year on account of any debt that provides for a balloon payment. If the balloon payment debt was incurred within the immediately preceding fiscal year, the amount required by this paragraph for that debt is 12 times the provider's most recent monthly payment on the debt made during the fiscal year.

(b) If any balloon payment debt matures within the next 24 months, the provider shall submit with its annual report a plan for refinancing the debt or repaying the debt with existing assets.

(c) When principal and interest payments on long-term debt are paid to a trust whose beneficial interests are held by the residents, the department may waive all or any portion of the debt service reserve required by this section. The department shall not waive any debt service

reserve requirement unless the department finds that the waiver is consistent with the financial protections imposed by this chapter.

SEC. 57.31. Section 1792.4 is added to the Health and Safety Code, to read:

1792.4. (a) Each provider shall include in its liquid reserve a reserve for its operating expenses in an amount that equals or exceeds 45 days' net operating expenses. For purposes of this section:

(1) Forty-five days net operating expenses shall be calculated by dividing the provider's operating expenses during the immediately preceding fiscal year by 365, and multiplying that quotient by 45.

(2) ''Net operating expenses'' includes all expenses except the following:

(A) The interest and credit enhancement expenses factored into the provider's calculation of its long-term debt reserve obligation described in Section 1792.3.

(B) Depreciation or amortization expenses.

(C) An amount equal to the reimbursement paid to the provider during the past 12 months for services to residents other than residents holding continuing care contracts.

(D) Extraordinary expenses that the department determines may be excluded by the provider. A provider shall apply in writing for a determination by the department and shall provide supporting documentation prepared in accordance with generally accepted accounting principles.

(b) A provider that has been in operation for less than 12 months shall calculate its net operating expenses by using its actual expenses for the months it has operated and, for the remaining months, the projected net operating expense amounts it submitted to the department as part of its application for a certificate of authority.

SEC. 57.35. Section 1792.5 is added to the Health and Safety Code, to read:

1792.5. (a) The provider shall compute its liquid reserve requirement as of the end of the provider's most recent fiscal yearend based on its audited financial statements for that period and, at the time it files its annual report, shall file a form acceptable to the department certifying all of the following:

(1) The amount the provider is required to hold as a liquid reserve, including the amounts required for the debt service reserve and the operating expense reserve.

(2) The qualifying assets, and their respective values, the provider has designated for its debt service reserve and for its operating expense reserve.

(3) The amount of any deficiency or surplus for the provider's debt service reserve and the provider's operating expense reserve.

(b) The provider shall also complete the same form and file it with the department within 45 days following the conclusion of each quarter during the provider's fiscal year. For each quarterly report, the amount the provider is required to designate for its debt reserve and operating expense reserve shall be based on the provider's audited financial statements for its most recently completed fiscal year.

(c) For the purpose of calculating the amount held by the provider to satisfy its liquid reserve requirement, all qualifying assets used to satisfy the liquid reserve requirements shall be valued at their fair market value as of the end of the provider's most recent quarter. Restricted assets that have guaranteed values and are designated as qualifying assets under paragraph (6) or (7) of subdivision (a) of Section 1792.2 may be valued at their guaranteed values.

SEC. 57.36. Section 1792.6 is added to the Health and Safety Code, to read:

1792.6. (a) Any provider offering a refundable contract, or other entity assuming responsibility for refundable contracts, shall maintain a refund reserve in trust for the residents. The amount of the refund reserve shall be revised annually by the provider and the provider shall submit its calculation of the refund reserve amount to the department in conjunction with the annual report required by Section 1790. This reserve shall accumulate interest and earnings and shall be invested in any of the following:

(1) Qualifying assets as defined in Section 1792.2.

(2) Real estate, subject to all of the following conditions:

(A) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is both used to provide care and housing for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contractholders reside.

(B) Investments in real estate shall be limited to 50 percent of the providers' net equity in the real estate. The net equity shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less any depreciation, and encumbrances, all according to audited financial statements acceptable to the department.

(b) Each refund reserve trust shall be established at an institution qualified to be an escrow agent. The escrow agreement between the provider and the institution shall be in writing and include the terms and conditions described in this section. The escrow agreement shall be submitted to and approved by the department before it becomes effective.

(c) The amount to be held in the reserve shall be the total of the amounts calculated with respect to each individual resident holding a refundable contract as follows:

(1) Determine the age in years and the portion of the entry fee for the resident refundable for the seventh year of residency and thereafter.

(2) Determine life expectancy of that individual based on all of the following rules:

(A) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
55	26.323	23.635	83	7.952	6.269
56	25.526	22.863	84	7.438	5.854
57	24.740	22.101	85	6.956	5.475
58	23.964	21.350	86	6.494	5.124
59	23.199	20.609	87	6.054	4.806
60	22.446	19.880	88	5.613	4.513
61	21.703	19.163	89	5.200	4.236
62	20.972	18.457	90	4.838	3.957
63	20.253	17.764	91	4.501	3.670
64	19.545	17.083	92	4.175	3.388
65	18.849	16.414	93	3.862	3.129
66	18.165	15.759	94	3.579	2.903
67	17.493	15.116	95	3.329	2.705
68	16.832	14.486	96	3.109	2.533
69	16.182	13.869	97	2.914	2.384
70	15.553	13.268	98	2.741	2.254
71	14.965	12.676	99	2.584	2.137
72	14.367	12.073	100	2.433	2.026
73	13.761	11.445	101	2.289	1.919
74	13.189	10.830	102	2.152	1.818
75	12.607	10.243	103	2.022	1.723
76	12.011	9.673	104	1.899	1.637
77	11.394	9.139	105	1.784	1.563
78	10.779	8.641	106	1.679	1.510
79	10.184	8.159	107	1.588	1.500
80	9.620	7.672	108	1.522	1.500
81	9.060	7.188	109	1.500	1.500
82	8.501	6.719	110	1.500	1.500

(B) If there is a couple, the life expectancy for the person with the longer life expectancy shall be used.

(C) The life expectancy table set forth in this paragraph shall be used until expressly provided to the contrary through the amendment of this section.

(D) For residents over 110 years of age, 1.500 years shall be used in computing life expectancy.

(E) If a continuing care retirement community has contracted with a resident under 55 years of age, the continuing care retirement community shall provide the department with the methodology used to determine that resident's life expectancy.

(3) For that resident, use an interest rate of 6 percent or lower to determine from compound interest tables the factor that, when multiplied by one dollar ($1), represents the amount, at the time the computation is made, that will grow at the assumed compound interest rate to one dollar ($1) at the end of the period of the life expectancy of the resident.

(4) Multiply the refundable portion of the resident's entry fee amount by the factor obtained in paragraph (3) to determine the amount of reserve required to be maintained.

(5) The sum of these amounts with respect to each resident shall constitute the reserve for refundable contracts.

(6) The reserve for refundable contracts shall be revised annually as provided for in subdivision (a), using the interest rate, refund obligation amount, and individual life expectancies current at that time.

(d) Withdrawals may be made from the trust to pay refunds when due under the terms of the refundable entrance fee contracts and when the balance in the trust exceeds the required refund reserve amount determined in accordance with subdivision (c).

(e) Deposits shall be made to the trust with respect to new residents when the entrance fee is received and in the amount determined with respect to that resident in accordance with subdivision (c).

(f) Additional deposits shall be made to the trust fund within 30 days of any annual reporting date on which the trust fund balance falls below the required reserve in accordance with subdivision (c) and the deposits shall be in an amount sufficient to bring the trust balance into compliance with this section.

(g) Providers who have used a method previously allowed by statute to satisfy their refund reserve requirement may continue to use that method.

SEC. 57.4. Article 6.5 (commencing with Section 1792.11) is added to Chapter 10 of Division 2 of the Health and Safety Code, to read:

Article 6.5. Actuarial Study

1792.11. The Legislature finds and declares all of the following:

(a) In continuing care contracts, providers offer a wide variety of living accommodations and care programs for an indefinite or extended

number of years in exchange for substantial payments by residents over the term of the contract.

(b) The annual reporting and reserve requirements for continuing care providers should address a provider's long-term solvency. The past statutes establishing reserve requirements did not satisfactorily address this issue.

(c) One method for comprehensively assessing a continuing care provider's long-term solvency, that may have significant potential benefits for residents, providers, and the department, is an actuarial study performed in compliance with Actuarial Standards of Practice Number 3 as adopted by the Actuarial Standards Board.

(d) The continuing care statutes should, during a test period sufficient to apply the actuarial study requirement to all appropriate providers, require those providers to obtain and file with the department an actuarial study.

(e) Fundamental to the effectiveness of actuarial studies are the assumptions used to project costs and revenues, as well as the breadth of the data base from which many of the assumptions are derived. For this and other reasons, neither the issues that will arise during the department's management of the actuarial study requirement nor the immediate impact of the actuarial study requirement on the continuing care industry can be fully anticipated.

(f) In the context of the foregoing, it is in the public's interest that:

(1) The statutes applicable to continuing care retirement communities require all providers, with certain exceptions, to conduct a one-time comprehensive assessment of their long-term solvency and to report that assessment to the department.

(2) The statutes applicable to continuing care retirement communities implement a four-year trial program that requires specified continuing care providers, and applicants for a certificate of authority, to conduct an actuarial study.

(3) The stability and longevity of the continuing care industry not be threatened by the four-year test program or dissemination by the department of any provider's actuarial study within four years of the filing date for the actuarial study.

(4) During a four-year trial period, the department, as well as provider and resident representatives, assess the effectiveness of using actuarial studies to analyze the long-term financial viability of the providers in California.

1792.12. (a) The department shall implement in conformance with this article a four-year trial program for examining, and reporting on, the long-term solvency of specified continuing care providers.

(b) Under the program, the department shall require providers to obtain an actuarial study conducted in compliance with the Actuarial

Standards of Practice Number 3 and then to file their actuarial study with the department.

(c) It is the intent of the Legislature that the four-year trial program shall do both of the following:

(1) Allow the department to consider the effectiveness and role of actuarial studies in the department's discharge of its obligation to assess each provider's financial soundness.

(2) Allow providers, the department, and resident representatives to evaluate the actuarial study requirement, including the reliability of actuarial studies and their value if statutorily included in the regimen of continuing care providers' financial reporting and disclosure obligations.

(d) The department shall, during the four-year period following the filing due date for a provider's actuarial study required under this article, maintain the confidentiality of the actuarial study.

(e) The department's responsibility to manage the four-year trial program and review the providers' actuarial studies under this article represents a significant burden on its resources dedicated to its oversight of the continuing care industry. The department is specifically authorized to use third-party professional consultants as necessary to properly discharge its responsibilities under this article and to also allocate resources from the Continuing Care Provider Fee Fund as necessary to retain within the department the level of expertise required by the program.

(f) During the four-year trial program, the five-hundred-thousand-dollar ($500,000) ceiling on the projected annual balance for the Continuing Care Provider Fee Fund specified in Section 1778 shall be increased to seven hundred fifty thousand dollars ($750,000).

1792.13. (a) During the four-year trial period, the department shall continually assess the effectiveness of using actuarial studies to analyze the long-term financial position of the providers in California.

(b) On January 1, 2003, the department shall form a nine-member panel after consultation with the prominent residents' associations, the prominent providers' associations, and the Continuing Care Advisory Committee. The department shall appoint to the panel three resident representatives, three provider representatives, and three representatives of the department. The panel shall determine the value of the actuarial study requirement in terms of all of the following:

(1) Its effectiveness as a method for assessing a provider's long-term solvency.

(2) Its usefulness to the department in the discharge of its statutory oversight responsibilities regarding providers' financial soundness.

(3) Its usefulness to providers as a management tool.

(4) Its effectiveness as a method for disclosing financial information regarding providers to residents and potential residents of continuing care facilities.

(c) The expenses incurred by the panel's members shall be charged to the Continuing Care Provider Fee Fund in the same manner and to the same extent as the expenses incurred by the members of the Continuing Care Advisory Committee are charged to the Continuing Care Provider Fee Fund under this chapter.

(d) The panel shall issue a report to the department before February 13, 2004. The report shall include the panel's findings and any statutory changes it proposes to implement its findings. The report shall specifically address whether the actuarial study requirement should continue as law, and if so, it shall also reexamine how best to classify providers for purposes of the actuarial study requirement and recommend the appropriate interval between the actuarial studies required for each type of provider. If the panel advises against continuing the actuarial study requirement, the panel:

(1) May recommend an alternative process, or ratify existing processes for evaluating and reporting a provider's long-term solvency.

(2) Shall reexamine the adequacy of the reserve requirements stated in Article 6 (commencing with Section 1789) and make any recommendations it deems appropriate.

(3) Shall reexamine the disclosure obligations of providers in regard to their long-term solvency and make any recommendations it deems appropriate.

(e) The department shall submit recommendations to the Legislature as necessary to implement the recommendations of the panel through the enactment of legislation that would be effective on or before January 1, 2005.

1792.14. (a) For purposes of this article, ''actuarial study'' means an analysis that addresses the current actuarial financial condition of a provider that is performed by an actuary in accordance with accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. An actuarial study shall include all of the following:

(1) An actuarial report.

(2) A statement of actuarial opinion.

(3) An actuarial balance sheet.

(4) A cohort pricing analysis.

(5) A cash-flow projection.

(6) A description of the actuarial methodology, formulae, and assumptions.

(b) ''Actuary'' means a member in good standing of the American Academy of Actuaries who is qualified to sign a statement of actuarial opinion.

1792.15. (a) An actuarial study, prepared or reviewed by an actuary, shall be submitted to the department by every applicant proposing a new continuing care retirement community except those applicants that, as of January 1, 2001, have fully satisfied the requirements of Section 1780 for issuance of a permit to accept deposits related to the proposed project. The actuarial study shall demonstrate that the proposed continuing care retirement community's financial position is in satisfactory actuarial balance and shall include all of the following:

(1) An actuarial balance sheet that demonstrates that, for a hypothetical cohort of new residents at the proposed continuing care retirement community, the sum of the entrance fees to be paid at occupancy plus the actuarial present value at occupancy of those residents' periodic fees equals the actuarial present value at occupancy of the costs of performing all obligations to those residents under their continuing care contracts, plus appropriate provision for surplus.

(2) Supporting detailed documentation for the actuarial balance sheet, including all of the following:

(A) A projection of future population flows, for the first 20 years, using appropriate mortality, morbidity, withdrawal, and other demographic assumptions.

(B) A projection of future health care needs and corresponding costs by level of care, for the first 20 years, using appropriate inflation factors, mortality, morbidity, withdrawal, and other demographic assumptions.

(C) A description of the actuarial data, assumptions, and methods used to create the projections in the actuarial report.

(3) A pricing analysis that demonstrates that, for a typical cohort of replacement residents at the continuing care retirement community, the sum of the entrance fees to be paid at occupancy plus the actuarial present value at occupancy of periodic fees paid by the residents equals the actuarial present value at occupancy of the costs of performing all obligations to the residents under their continuing care contracts, with appropriate provision for surplus.

(4) Cash-flow statements that project positive cash balances for a 20-year period.

(5) The opinion of the actuary that the data and assumptions used are reasonable and appropriate, the methods employed are consistent with sound actuarial principles and practices, and provision has been made for all actuarial liabilities and related statement items.

1792.16. (a) Each provider shall submit an actuarial study to the department during the years specified in Section 1792.18.

(b) All actuarial studies shall be prepared or reviewed by an actuary and shall include all of the following:

(1) An actuarial balance sheet that demonstrates whether the resources available for current residents, including the actuarial present value of periodic fees to be paid by the residents, is greater than or equal to the actuarial present value of the costs of performing all remaining obligations to those residents under their continuing care contracts, with appropriate provision for surplus.

(2) Supporting detailed documentation for the actuarial balance sheet, including all of the following:

(A) A projection of future population flows, for the next 20 years, using appropriate mortality, morbidity, withdrawal, and other demographic assumptions.

(B) A projection of future health care needs and corresponding costs, for the next 20 years, using appropriate inflation factors, mortality, morbidity, withdrawal, and other demographic assumptions.

(C) A description of the actuarial data, assumptions, and methods used to create the projections in the actuarial study.

(3) A pricing analysis that demonstrates whether, for a typical cohort of replacement residents at the continuing care retirement community, the sum of the entrance fees to be paid at occupancy plus the actuarial present value at occupancy of periodic fees paid by the residents equals the actuarial present value at occupancy of the costs of performing all remaining obligations to the residents under their continuing care contracts, with appropriate provision for surplus.

(4) Cash-flow statements that project cash balances with respect to current and future residents for a period of at least 20 years.

(5) The opinion of the actuary that the data and assumptions used are appropriate, the methods employed are consistent with sound actuarial principles and practices, and whether provision has been made for all actuarial liabilities and related statement items.

1792.17. (a) For purposes of this section, the term ''health care guarantee'' means the degree to which the fees charged by a provider in a continuing care contract for health care, including assisted living services and skilled nursing care, are less than the fees charged by the provider on a per diem basis to noncontinuing care residents. The three types of health care guarantees are extensive, limited, and nominal and are described as follows:

(1) An extensive health care guarantee exists in all life care contracts and prepaid contracts as well as all other continuing care contracts where a resident either:

(A) Pays the same or nearly the same monthly fee for health care, including temporary or permanent assisted living services or skilled

nursing care, as the resident was charged while residing in an independent living unit.

(B) Pays a rate for health care, including temporary or permanent assisted living or skilled nursing care, that, regardless of the duration of his or her health care needs, is 80 percent or less of the per diem rate charged to noncontinuing care contract residents.

(2) A limited health care guarantee exists in all continuing care contracts where the health care guarantee is not extensive or nominal.

(3) A nominal health care guarantee exists in all continuing care contracts where the resident is charged less than the per diem rate charged to noncontinuing care residents for health care for five or fewer days in any 12-month period and otherwise pays on a per diem basis for all levels of health care.

(b) The department shall classify each provider as a Type I Provider, a Type II Provider, or a Type III Provider based on the following:

(1) A Type I Provider is a provider that has entered into a continuing care contract that includes an extensive health care guarantee.

(2) A Type II Provider is a provider to which both of the following apply:

(A) Has entered into a continuing care contract that includes a limited health care guarantee.

(B) Has not entered into any continuing care contract that includes an extensive health care guarantee.

(3) A Type III Provider is a provider that satisfies either of the following:

(A) It has only entered into continuing care contracts that include nominal health care guarantees.

(B) It does not charge entrance fees or monthly service fees, such as those providers who accept an assignment of assets and fund the costs of providing care with charitable contributions.

1792.18. (a) A provider shall file its actuarial study within 45 days after the due date for its annual report. Each provider that operates more than one continuing care retirement community shall prepare one actuarial study encompassing all its communities and shall be assigned a single date for filing its actuarial study. All providers shall file actuarial studies with the department during the years specified as follows:

(1) Each provider classified as a Type I Provider shall file an initial actuarial study following its annual report filed during the 2001 calendar year. A Type I Provider that has completed an actuarial study satisfying the requirements of this article during the 2000 calendar year may file that actuarial study with the department in order to satisfy the provider's obligation under this section.

(2) Each provider classified as a Type II Provider shall file an initial actuarial study according to the following schedule:

(A) Six of the providers holding certificates of authority on January 1, 2001, or a lesser number, at the department's discretion, shall file their actuarial studies following their annual report filed during the 2001 calendar year.

(B) One-half of the remaining number of providers holding certificates of authority on January 1, 2001, shall file their actuarial studies following their annual reports filed during the 2002 calendar year.

(C) The remaining providers holding certificates of authority on January 1, 2001, shall file their actuarial studies following their annual reports filed during the 2003 calendar year.

(3) A provider classified as a Type III Provider shall not be obligated by this article to file an actuarial study.

(b) As soon as practicable following January 1, 2001, the Continuing Care Advisory Committee shall select randomly those Type II Providers that will be required to file their actuarial studies following their annual reports filed during the 2001, 2002, and 2003 calendar years. A Type II Provider that has completed an actuarial study satisfying the requirements of this article during the 2000 calendar year may request that the department both designate the provider as one of the providers that is required to file an actuarial study in the 2001 calendar year and that the provider's 2000 calendar year actuarial study be accepted by the department in satisfaction of the provider's obligation to file an actuarial study in the 2001 calendar year. A provider shall submit to the department a copy of its 2000 calendar year actuarial study with its request.

(c) Applicants that have applications pending as of January 1, 2001, shall file an actuarial study as follows:

(1) Applicants that submitted an actuarial study with their application shall file their initial actuarial study as a provider during the year they file their first annual report after the earliest of the following occurs:

(A) The new continuing care retirement community reaches 85-percent occupancy.

(B) Thirty months following the issuance of a preliminary certificate of authority for the new continuing care retirement community.

(2) All other applicants shall file their initial actuarial study during the year they file their first annual report.

(d) A provider shall pay a one-thousand-dollar ($1,000) late fee if it fails to file its actuarial study on or before the date it is due. A provider shall pay an additional late fee of thirty-three dollars ($33) per day for each day after the first 30 days that the actuarial study is late. All late fees due shall accompany the actuarial study when it is filed or late fees shall continue to accrue until paid. The late fees described in this subdivision are separate from, and accrue independently of, any other late fees that

may apply if a provider fails to file its annual report when due. The department may, at its discretion, waive this late fee upon a showing of good cause by the provider.

1792.19. (a) Each actuarial study required of a provider by Section 1792.16 shall demonstrate that the provider's financial condition is in satisfactory actuarial balance, including an appropriate surplus, such that the provider has the financial resources to meet all its actuarial liabilities. A provider's financial condition is in satisfactory actuarial balance if its actuarial study includes all of the following:

(1) An actuarial balance sheet that demonstrates the resources available for current residents at the continuing care retirement community, including the actuarial present value of periodic fees to be paid by the residents, at least equals the actuarial present value of the costs of performing all remaining obligations to those residents under their continuing care contracts, with appropriate provision for surplus.

(2) A pricing analysis that demonstrates, for a typical cohort of replacement residents at the continuing care retirement community, the sum of the entrance fees to be paid at occupancy plus the actuarial present value at occupancy of periodic fees paid by the residents equals the actuarial present value at occupancy of the costs of performing all remaining obligations to the residents under their continuing care contracts, with appropriate provision for surplus.

(3) Cash-flow statements that project positive cash balances with respect to current and future residents for a period of at least 20 years.

(4) The opinion of the actuary that provision has been made for all actuarial liabilities and related statement items.

(b) In the event that an actuarial study shows insufficient financial resources to meet all its actuarial liabilities or an actuarial balance sheet deficit, the actuarial report shall clearly state the implications of the provider's financial condition. The report shall specifically describe management's plans for improving its financial position to achieve an actuarial balance including an appropriate surplus. In addition, the provider shall submit with its actuarial study a detailed narrative addressing its actuarial deficiency and describing its plan to achieve actuarial balance.

1792.20. (a) Each provider that has submitted an actuarial study to the department shall, after the close of each fiscal year, review and compare its actual results from operations during the closed year to the assumptions made in its actuarial study for that year in a form prescribed by the department.

(b) Providers are not required to file the statement described in subdivision (a) in any year that they file an actuarial report.

1792.21. Any unpaid fines accruing or assessed under the provisions of this article as of January 1, 2005, when this article is

repealed pursuant to Section 1792.22 shall remain payable and continue to accrue in the same manner as provided in this article.

1792.22. This article shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 58. Section 1793.5 of the Health and Safety Code is amended to read:

1793.5. (a) An entity that accepts deposits and proposes to promise to provide care without having a current and valid permit to accept deposits is guilty of a misdemeanor.

(b) An entity that accepts deposits and fails to place any deposit received into an escrow account as required by this chapter is guilty of a misdemeanor.

(c) An entity that executes a continuing care contract without holding a current and valid provisional certificate of authority or certificate of authority is guilty of a misdemeanor.

(d) An entity that abandons a continuing care retirement community or its obligations under a continuing care contract is guilty of a misdemeanor. An entity that violates this section shall be liable to the injured resident for treble the amount of damages assessed in any civil action brought by or on behalf of the resident in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney fees to the injured resident, if that resident prevails in the action.

(e) Each violation of subdivision (a), (b), (c), or (d) is subject to a fine not to exceed ten thousand dollars ($10,000), or by imprisonment in the county jail for a period not to exceed one year, or by both.

(f) An entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of any printed matter, oral representation, or advertising material which does not comply with the requirements of this chapter is guilty of a misdemeanor.

(g) A violation of subdivision (f) by an entity will constitute cause for the suspension of all and any licenses, permits, provisional certificates of authority, and certificates of authority issued to that entity by any agency of the state.

(h) A violation under this section is an act of unfair competition as defined in Section 17200 of the Business and Professions Code.

SEC. 59. Section 1793.6 of the Health and Safety Code is amended to read:

1793.6. (a) The department may issue citations pursuant to this section containing orders of abatement and assessing civil penalties against any entity that violates Section 1771.2 or 1793.5.

(b) If upon inspection or investigation, the department has probable cause to believe that an entity is violating Section 1771.2 or 1793.5, the department may issue a citation to that entity. Each citation shall be in

writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement. In addition to the administrative fines imposed pursuant to Section 1793.27, an entity that violates the abatement order shall be liable for a civil penalty in the amount of two hundred dollars ($200) per day for violation of the abatement order.

(c) The civil penalty authorized in subdivision (b) shall be imposed if a continuing care retirement community is operated without a provisional certificate of authority or certificate of authority and the operator refuses to seek a certificate of authority or the operator seeks a certificate of authority and the application is denied and the operator continues to operate the continuing care retirement community without a provisional certificate of authority or certificate of authority, unless other remedies available to the department, including prosecution, are deemed more appropriate by the department.

(d) Service of a citation issued under this section may be made by certified mail at the last known business address or residence address of the entity cited.

(e) Within 15 days after service of a citation under this section, an entity may appeal in writing to the department with respect to the violations alleged, the scope of the order of abatement, or the amount of civil penalty assessed.

(f) If the entity cited fails without good cause to appeal in writing to the department within 15 business days after service of the citation, the citation shall become a final order of the department. The department may extend the 15-day period for good cause, to a maximum of 15 additional days.

(g) If the entity cited under this section makes a timely appeal of the citation, the department shall provide an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(h) After exhaustion of the review procedures specified in this section, the department may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited entity to comply with the order of abatement. The application, which shall include a certified copy of the final order of the department shall be served upon the cited entity who shall have five business days to file that entity's response in writing in the superior court. This period may be extended for good cause. Failure on the part of the cited entity to respond shall constitute grounds for entry of a default judgment

against that entity. In the event a response is timely filed in superior court, the action shall have priority for trial over all other civil matters.

(i) Notwithstanding any other provision of law, the department may waive part or all of the civil penalty if the entity against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a provisional certificate of authority or certificate of authority.

(j) Civil penalties recovered pursuant to this section shall be deposited into the Continuing Care Provider Fee Fund.

SEC. 60. Section 1793.7 of the Health and Safety Code is amended to read:

1793.7. A permit to accept deposits, a provisional certificate of authority, or a certificate of authority shall be forfeited by operation of law when any one of the following occurs:

(a) The applicant terminates marketing for the proposed continuing care retirement community.

(b) The applicant or provider surrenders to the department its residential care facility for the elderly license, the permit to accept deposits, provisional certificate of authority, or certificate of authority for a continuing care retirement community.

(c) The applicant or provider sells or otherwise transfers all or part of the continuing care retirement community.

(d) A change occurs in the majority ownership of the continuing care retirement community or the certificate of authority holder.

(e) The applicant or provider merges with another entity.

(f) The applicant or entity makes a material change in a pending application which requires a new application pursuant to subdivision (c) of Section 1779.8.

(g) The applicant or provider moves the continuing care retirement community from one location to another without the department's prior approval.

(h) The applicant or provider abandons the continuing care retirement community or its obligations under the continuing care contracts.

(i) The applicant or provider is evicted from the continuing care retirement community premises.

SEC. 61. Section 1793.8 of the Health and Safety Code is amended to read:

1793.8. A Certificate of Authority shall be automatically inactivated when a provider voluntarily ceases to enter into continuing care contracts with new residents. The provider shall notify the department of its intention to cease entering into continuing care contracts and shall continue to comply with all provisions of this chapter until all continuing care contract obligations have been fulfilled.

SEC. 62. Section 1793.9 of the Health and Safety Code is amended to read:

1793.9. (a) In the event of liquidation, all claims made against a provider based on the provider's continuing care contract obligations shall be preferred claims against all assets owned by the provider. However, these preferred claims shall be subject to any perfected claims secured by the provider's assets.

(b) If the provider is liquidated, residents who have executed a refundable continuing care contract shall have a preferred claim to liquid assets held in the refund reserve pursuant to Section 1792.6. This preferred claim shall be superior to all other claims from residents without refundable contracts or other creditors. If this fund and any other available assets are not sufficient to fulfill the refund obligations, each resident shall be distributed a proportionate amount of the refund reserve funds determined by dividing the amount of each resident's refund due by the total refunds due and multiplying that percentage by the total funds available.

(c) For purposes of computing the reserve required pursuant to Sections 1792.2 and 1793, the liens required under Section 1793.15 are not required to be deducted from the value of real or personal property.

SEC. 63. Section 1793.11 of the Health and Safety Code is amended to read:

1793.11. (a) Any transfer of money or property, pursuant to a continuing care contract found by the department to be executed in violation of this chapter, is voidable at the option of the resident or transferor for a period of 90 days from the execution of the transfer.

(b) Any deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to rescission by the resident or transferor within 90 days from the date of first occupancy.

(c) No action may be brought for the reasonable value of any services rendered between the date of transfer and the date the resident disaffirms the continuing care contract.

(d) With respect to real property, the right of disaffirmance or rescission is conclusively presumed to have terminated if a notice of intent to rescind is not recorded with the county recorder of the county in which the real property is located within 90 days from the date of first occupancy of the residential living unit.

(e) A transfer of money or property, real or personal, to anyone pursuant to a continuing care contract that was not approved by the department is voidable at the option of the department or transferor or his or her assigns or agents.

(f) A transaction determined by the department to be in violation of this chapter is voidable at the option of the resident or his or her assignees or agents.

SEC. 64. Section 1793.13 of the Health and Safety Code is amended to read:

1793.13. (a) The department may require a provider to submit a financial plan, if either of the following applies:

(1) A provider fails to file a complete annual report as required by Section 1790.

(2) The department has reason to believe that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) A provider shall submit its financial plan to the department within 60 days following the date of the department's request. The financial plan shall explain how and when the provider will rectify the problems and deficiencies identified by the department.

(c) The department shall approve or disapprove the plan within 30 days of its receipt.

(d) If the plan is approved, the provider shall immediately implement the plan.

(e) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may, after consultation with and upon consideration of the recommendations of the Continuing Care Advisory Committee, consult with its financial consultants to develop a corrective action plan at the provider's expense, or require the provider to obtain new or additional management capability approved by the department to solve its difficulties. A reasonable period, as determined by the department, shall be allowed for the reorganized management to develop a plan which, subject to the approval of the department and after review by the committee, will reasonably assure that the provider will meet its responsibilities under the law.

SEC. 65. Section 1793.15 of the Health and Safety Code is amended to read:

1793.15. (a) When necessary to secure an applicant's or a provider's performance of its obligations to depositors or residents, the department may record a notice or notices of lien on behalf of the depositors or residents. From the date of recording, the lien shall attach to all real property owned or acquired by the provider during the pendency of the lien, provided the property is not exempt from the execution of a lien and is located within the county in which the lien is recorded. The lien shall have the force, effect, and priority of a judgment lien.

(b) The department may record a lien on any real property owned by the provider if the provider's annual report indicates the provider has an unfunded statutory or refund requirement. A lien filed pursuant to this section shall have the effect, force, and priority of a judgment lien filed against the property.

(c) The department shall file a release of the lien if the department determines that the lien is no longer necessary to secure the applicant's or provider's performance of its obligations to the depositors or residents.

(d) Within 10 days following the department's denial of a request for a release of the lien, the applicant or provider may file an appeal with the department.

(e) The department's final decision shall be subject to court review pursuant to Section 1094.5 of the Code of Civil Procedure, upon petition of the applicant or provider filed within 30 days of service of the decision.

SEC. 66. Section 1793.17 of the Health and Safety Code is amended to read:

1793.17. (a) When necessary to secure the interests of depositors or residents, the department may require that the applicant or provider reestablish an escrow account, return previously released moneys to escrow, and escrow all future entrance fee payments.

(b) The department may release funds from escrow as it deems appropriate or terminate the escrow requirement when it determines that the escrow is no longer necessary to secure the performance of all obligations of the applicant or provider to depositors or residents.

SEC. 67. Section 1793.19 of the Health and Safety Code is amended to read:

1793.19. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed by the department, in any combination to enforce this chapter.

SEC. 68. Section 1793.21 of the Health and Safety Code is amended to read:

1793.21. The department, in its discretion, may condition, suspend, or revoke any permit to accept deposits, provisional certificate of authority, or certificate of authority issued under this chapter if it finds that the applicant or provider has done any of the following:

(a) Violated this chapter or the rules and regulations adopted under this chapter.

(b) Aided, abetted, or permitted the violation of this chapter or the rules and regulations adopted under this chapter.

(c) Had a license suspended or revoked pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(d) Made a material misstatement, misrepresentation, or fraud in obtaining the permit to accept deposits, provisional certificate of authority, or certificate of authority.

(e) Demonstrated a lack of fitness or trustworthiness.

(f) Engaged in any fraudulent or dishonest practices of management in the conduct of business.

(g) Misappropriated, converted, or withheld moneys.

(h) After request by the department for an examination, access to records, or information, refused to be examined or to produce its accounts, records, and files for examination, or refused to give information with respect to its affairs, or refused to perform any other legal obligations related to an examination.

(i) Manifested an unsound financial condition.

(j) Used methods and practices in the conduct of business so as to render further transactions by the provider or applicant hazardous or injurious to the public.

(k) Failed to maintain at least the minimum statutory reserves required by Section 1792.2.

(*l*) Failed to maintain the reserve fund escrow account for prepaid continuing care contracts required by Section 1792.

(m) Failed to comply with the refund reserve requirements stated in Section 1793.

(n) Failed to comply with the requirements of this chapter for maintaining escrow accounts for funds.

(o) Failed to file the annual report described in Section 1790.

(p) Violated a condition on its permit to accept deposits, provisional certificate of authority, or certificate of authority.

(q) Failed to comply with its approved financial and marketing plan or to secure approval of a modified plan.

(r) Materially changed or deviated from an approved plan of operation without the prior consent of the department.

(s) Failed to fulfill his or her obligations under continuing care contracts.

(t) Made material misrepresentations to depositors, prospective residents, or residents of a continuing care retirement community.

(u) Failed to submit proposed changes to continuing care contracts prior to use, or using a continuing care contract that has not been previously approved by the department.

(v) Failed to diligently submit materials requested by the department or required by the statute.

SEC. 69. Section 1793.23 of the Health and Safety Code is amended to read:

1793.23. (a) The department shall consult with and consider the recommendations of the Continuing Care Advisory Committee prior to conditioning, suspending, or revoking any permit to accept deposits, provisional certificate of authority, or certificate of authority.

(b) The provider shall have a right of appeal to the department. The proceedings shall be conducted in accordance with Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the powers granted therein. A suspension, condition, or revocation shall remain in effect until completion of the proceedings in favor of the provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

(c) The department may, upon finding of changed circumstances, remove a suspension or condition.

SEC. 70. Section 1793.25 of the Health and Safety Code is amended to read:

1793.25. (a) During the period that the revocation or suspension action is pending against the permit to accept deposits, provisional certificate of authority, or certificate of authority, the provider shall not enter into any new deposit agreements or continuing care contracts.

(b) The suspension or revocation by the department, or voluntary return of the provisional certificate of authority or certificate of authority by the provider, shall not release the provider from obligations assumed at the time the continuing care contracts were executed.

SEC. 71. Section 1793.27 of the Health and Safety Code is amended to read:

1793.27. (a) If the department finds that any entity has violated Section 1793.5 or one or more grounds exist for conditioning, revoking, or suspending a permit to accept deposits, provisional certificate of authority, or a certificate of authority issued under this chapter, the department, in lieu of the condition, revocation, or suspension, may impose an administrative fine upon an applicant or provider in an amount not to exceed one thousand dollars ($1,000) per violation.

(b) The administrative fine shall be deposited in the Continuing Care Provider Fee Fund and shall be disbursed for the specific purposes of offsetting the costs of investigation and litigation and to compensate court-appointed administrators when continuing care retirement community assets are insufficient.

SEC. 72. Section 1793.29 of the Health and Safety Code is amended to read:

1793.29. In the case of any violation or threatened violation of this chapter, the department may institute a proceeding or may request the Attorney General to institute a proceeding to obtain injunctive or other equitable relief in the superior court in and for the county in which the violation has occurred or will occur, or in which the principal place of business of the provider is located. The proceeding under this section 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 no undertaking shall be required of the department in any action commenced under this section, nor shall the department be required to

allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage.

SEC. 73. Section 1793.50 of the Health and Safety Code is amended to read:

1793.50. (a) The department, after consultation with the Continuing Care Advisory Committee, may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate imminent crisis situations where elderly residents could lose support services or be moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) The provider has failed to submit a plan, as specified in Section 1793.13, the department has not approved the plan submitted by the provider, the provider has not fully implemented the plan, or the plan has not been successful.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the continuing care retirement community in order to accomplish one or more of the following: rehabilitate the provider to enable it fully to perform its continuing care contract obligations; implement a plan of reorganization acceptable to the department; facilitate the transition where another provider assumes continuing care contract obligations; or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court may consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court may direct.

(j) The court may permit the provider to participate in the continued operation of the continuing care retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

SEC. 74. Section 1793.56 of the Health and Safety Code is amended to read:

1793.56. (a) The appointed administrator is entitled to reasonable compensation.

(b) The costs compensating the administrator may be charged against the assets of the provider. When the provider's assets and assets from the continuing care retirement community are insufficient, the department, in its discretion, may compensate the administrator from the Continuing Care Provider Fee Fund.

(c) Any individual appointed administrator, pursuant to Section 1793.50, shall be held harmless for any negligence in the performance of his or her duties and the provider shall indemnify the administrator for all costs of defending actions brought against him or her in his or her capacity as administrator.

SEC. 75. Section 1793.58 of the Health and Safety Code is amended to read:

1793.58. (a) The department, administrator, or any interested person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the continuing care retirement community can be returned to the provider's management without further jeopardy to the residents of the continuing care retirement community, creditors, owners of the continuing care retirement community, and to the public.

(c) Before issuing any order terminating the rehabilitation proceeding the court shall consider a full report and accounting by the administrator regarding the provider's affairs, including the conduct of the provider's officers, employees, and business during the rehabilitation and the provider's current financial condition.

(d) Upon issuance of an order terminating the rehabilitation, the department shall reinstate the provisional certificate of authority or certificate of authority. The department may condition, suspend, or revoke the reinstated certificate only upon a change in the conditions existing at the time of the order or upon the discovery of facts which the department determines would have resulted in a denial of the request for an order terminating the rehabilitation had the court been aware of these facts.

SEC. 76. Section 1793.60 of the Health and Safety Code is amended to read:

1793.60. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the department may, with the approval of the Continuing Care Advisory Committee, apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional certificate of authority or certificate of authority.

SEC. 77. Section 1793.62 of the Health and Safety Code is amended to read:

1793.62. (a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale, the provider has been declared bankrupt, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

SEC. 78. 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 821

An act to add Section 1405 to, and to add and repeal Section 1417 of, the Penal Code, relating to forensic testing.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1405 is added to the Penal Code, to read:

1405. (a) A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing.

(1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:

(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

(2) Notice of the motion shall be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted.

(3) If any DNA or other biological evidence testing was conducted previously by either the prosecution or defense, the results of that testing shall be revealed in the motion for testing, if known. If evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, the court shall order the prosecution or defense to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA testing.

(b) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(c) The court shall appoint counsel for the convicted person who brings a motion under this section if that person is indigent.

(d) The court shall grant the motion for DNA testing if it determines all of the following have been established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing that is requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.

(6) The evidence sought to be tested meets either of the following conditions:

(A) It was not tested previously.

(B) It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(e) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. The testing shall be conducted by a laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

(f) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(g) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the district attorney or Attorney General shall not be borne by the convicted person.

(2) In order to pay the state's share of any testing costs, the laboratory designated in subdivision (e) shall present its bill for services to the superior court for approval and payment. It is the intent of the Legislature to appropriate funds for this purpose in the 2000–01 Budget Act.

(h) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. Any such petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeals. In a capital case, the petition shall be filed in the California Supreme Court. The court of appeals or California Supreme Court shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.

(i) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of

justice to give priority to the DNA testing, a DNA laboratory shall be required to give priority to the DNA testing ordered pursuant to this section over the laboratory's other pending casework.

(j) DNA profile information from biological samples taken from a convicted person pursuant to a motion for postconviction DNA testing is exempt from any law requiring disclosure of information to the public.

(k) The provisions of this section are severable. If any provision of this section 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. 2. Section 1417.9 is added to the Penal Code, to read:

1417.9. (a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 1405, however, upon filing of that application, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional

testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.

(3) No other provision of law requires that biological evidence be preserved or retained.

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

CHAPTER 822

An act to add Title 12.5 (commencing with Section 14250) to Part 4 of, and to repeal Section 14251 of, the Penal Code, relating to DNA.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

(a) That unidentified remains and unsolved missing persons cases constitute a critical problem for law enforcement and victims' families in the State of California.

(b) Hundreds of people, both children and adults, vanish each year under suspicious circumstances, and their cases remain unsolved. Meanwhile, coroners retain dozens of remains each year that cannot be identified. Families of missing persons must live with no sense of closure, even though their loved one may have already been found.

(c) The Legislature finds that new technology can play an invaluable role in identifying these remains through deoxyribonucleic acid (DNA) analysis.

(d) In order to identify these remains and bring closure to missing persons cases, the Legislature enacts the ''Missing Persons DNA Data Base.'' This data base shall be used to identify remains and to locate missing persons. The intention of this data base is to identify remains to bring closure to the families of missing persons.

SEC. 2. Title 12.5 (commencing with Section 14250) is added to Part 4 of the Penal Code, to read:

TITLE 12.5. DNA

14250. (a) (1) The Department of Justice shall develop a DNA data base for all cases involving the report of an unidentified deceased person or a high-risk missing person.

(2) The data base required in paragraph (1) shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA data base established by the Federal Bureau of Investigation. The sole purpose of this data base shall be to identify missing persons and shall be kept separate from the data base established under Chapter 6 (commencing with Section 295) of Title 9 of Part 1.

(3) The Department of Justice shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons.

(4) For the purpose of this data base, ''high-risk missing person'' means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency.

(b) The department shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints.

(c) (1) A coroner shall collect samples for DNA testing from the remains of all unidentified persons and shall send those samples to the Department of Justice for DNA testing and inclusion in the DNA data bank. After the department has taken a sample from the remains for DNA analysis and analyzed it, the remaining evidence shall be returned to the appropriate local coroner.

(2) After a report has been made of a person missing under high-risk circumstances, the responsible investigating law enforcement agency shall inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person if available. The samples shall be taken by the appropriate law enforcement agency in a

manner prescribed by the Department of Justice. The responsible investigating law enforcement agency shall wait no longer than 30 days after a report has been made to inform the parents or other relatives of their right to give a sample.

(3) The Department of Justice shall develop a standard release form that authorizes a mother, father, or other relative to voluntarily provide the sample. The release shall explain that DNA is to be used only for the purpose of identifying the missing person. No incentive or coercion shall be used to compel a parent or relative to provide a sample.

(4) The Department of Justice shall develop a model kit that law enforcement shall use when taking samples from parents and relatives.

(5) Before submitting the sample to the department for analysis, law enforcement shall reverify the status of the missing person. After 30 days has elapsed from the date the report was filed, law enforcement shall send the sample to the department for DNA testing and inclusion in the DNA data base, with a copy of the crime report, and any supplemental information.

(6) All samples and DNA extracted from a living person shall be destroyed after a positive identification is made and a report is issued.

(d) All DNA samples shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, and district attorneys, except that a law enforcement officer may notify a victim's family to disclose whether or not a match has occurred.

(e) (1) A person who collects, processes, or stores DNA or samples from a living person used for DNA testing under this section, who intentionally violates paragraph (6) of subdivision (c) or subdivision (d) is guilty of a misdemeanor punishable by imprisonment in a county jail.

(2) A person who collects, processes, or stores DNA from a living person or samples from a living person used for DNA testing under this section, who intentionally violates paragraph (6) of subdivision (c) or subdivision (d) is liable in civil damages to the donor of the DNA in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs.

14251. (a) The "Missing Persons DNA Data Base'' shall be funded by a two dollar ($2) fee increase on death certificates issued by a local government agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs. This fee increase shall remain in effect only until January 1, 2006, or when federal funding for operation of the data base becomes available if it becomes available before that date.

(b) Funds shall be directed on a quarterly basis to the ''Missing Persons DNA Data Base Fund,'' hereby established, to be administered by the department for establishing and maintaining laboratory

infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the department to various counties for the purposes of pathology and exhumation as the department deems necessary. The department may also use those funds to publicize the data base for the purpose of contacting parents and relatives so that they may provide a DNA sample for training law enforcement officials about the data base and DNA sampling and for outreach.

(c) The department shall create an advisory committee, comprised of coroners and appropriate law enforcement officials, and interested stakeholders to prioritize the identification of the backlog of unidentified remains. The identification of the backlog may be outsourced to other laboratories at the department's discretion.

(d) (1) The death certificate fee increase shall begin and funds shall be directed to the Missing Persons DNA Data Base Fund beginning January 1, 2001. Funding for year one shall be used to develop the data base and laboratory infrastructure, and to establish Department of Justice protocols and personnel.

(2) The Department of Justice shall begin case analysis in 2002. The Department of Justice shall retain the authority to prioritize case analysis, giving priority to those cases involving children.

(3) If federal funding is made available, it shall be used to assist in the identification of the backlog of high-risk missing person cases and long-term unidentified remains.

(4) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 823

An act to amend Sections 296, 296.1, 297, 298, 299, and 299.5 of the Penal Code, relating to DNA.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 296 of the Penal Code is amended to read:

296. (a) (1) Any person who is convicted of any of the following crimes, or is found not guilty by reason of insanity of any of the following crimes, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:

(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.

(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.

(D) Felony spousal abuse in violation of Section 273.5.

(E) Aggravated sexual assault of a child in violation of Section 269.

(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.

(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.

(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.

(I) Torture in violation of Section 206 or an attempt to commit torture.

(2) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, and who is committed to any institution under

the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing.

(b) The provisions of this chapter and its requirements for submission to testing as soon as administratively practicable to provide specimens, samples, and print impressions as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and data base specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, to any of the offenses described in subdivision (a).

(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.

(e) The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter. However, failure by the court to enter these facts in the abstract of judgment shall not invalidate a plea, conviction, or

disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 2. Section 296.1 of the Penal Code is amended to read:

296.1. (a) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is granted probation, or serves his or her entire term of confinement in a county jail, or is not sentenced to a term of confinement in a state prison facility, or otherwise bypasses a prison inmate reception center maintained by the Department of Corrections, shall, as soon as administratively practicable, but in any case, prior to physical release from custody, be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as set forth in subdivision (a) of Section 296, at a county jail facility or other state, local, or private facility designated for the collection of these specimens, samples, and print impressions, in accordance with subdivision (f) of Section 295.

If the person subject to this chapter is not incarcerated at the time of sentencing, the court shall order the person to report within five calendar days to a county jail facility or other state, local, or private facility designated for the collection of specimens, samples, and print impressions to provide these specimens, samples, and print impressions in accordance with subdivision (f) of Section 295.

(b) If a person who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296 is sentenced to serve a term of imprisonment in a state correctional institution, the Director of Corrections shall collect the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter from the person during the intake process at the reception center designated by the director, or as soon as administratively practicable thereafter at a receiving penal institution.

(c) Any person, including, but not limited to, any juvenile and any person convicted and sentenced to death, life without the possibility of parole, or any life or indeterminate term, who is imprisoned or confined in a state correctional institution, a county jail, a facility within the jurisdiction of the Department of the Youth Authority, or any other state, local, or private facility after a conviction of any crime, or disposition rendered in the case of a juvenile, whether or not that crime or offense is one set forth in subdivision (a) of Section 296, shall provide two specimens of blood, a saliva sample, and thumb and palm print impressions pursuant to this chapter, as soon as administratively practicable once it has been determined that both of the following apply:

(1) The person has been convicted or adjudicated a ward of the court in California of a qualifying offense described in subdivision (a) of Section 296 or has been convicted or had a disposition rendered in any

other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in subdivision (a) of Section 296.

(2) The person's blood specimens, saliva samples, and thumb and palm print impressions authorized by this chapter are not in the possession of the Department of Justice DNA Laboratory as part of the DNA data bank program.

This subdivision applies regardless of when the person was convicted of the qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state, or when disposition was rendered in the case of a juvenile who is adjudged a ward of the court for commission of a qualifying offense described in subdivision (a) of Section 296 or a similar crime under the laws of the United States or any other state.

(d) Any person, including any juvenile, who comes within the provisions of this chapter for an offense set forth in subdivision (a) of Section 296, and who is on probation or parole, shall be required to provide two specimens of blood, a saliva sample, and thumb and palm print impressions as required pursuant to this chapter, if it is determined that the person has not previously provided these specimens, samples, and print impressions to law enforcement, or if it is determined that these specimens, samples, and print impressions are not in the possession of the Department of Justice. The person shall have the specimens, samples, and print impressions collected within five calendar days of being notified by a law enforcement agency or other agency authorized by the Department of Justice. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295 at a county jail facility or other state, local, or private facility designated for this collection.

This subdivision shall apply regardless of when the crime committed became a qualifying offense pursuant to this chapter.

(e) When an offender from another state is accepted into this state under any of the interstate compacts described in Article 3 (commencing with Section 11175) or Article 4 (commencing with Section 1189) of Chapter 2 of Title 1 of Part 4 of this code, or Chapter 4 (commencing with Section 1300) of Part 1 of Division 2 of the Welfare and Institutions Code, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing blood specimens, saliva samples, and palm and thumb print impressions pursuant to this chapter, if the offender was convicted of an offense which would qualify as a crime described in subdivision (a) of Section 296, or if the person was convicted of a similar crime under the laws of the United States or any other state.

If the person is not confined, the specimens, samples, and print impressions required by this chapter must be provided within five calendar days after the offender reports to the supervising agent or within five calendar days of notice to the offender, whichever occurs first. The person shall report to a county jail facility in the county where he or she resides or temporarily is located to have the specimens, samples, and print impressions collected pursuant to this chapter. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If the person is confined, he or she shall provide the blood specimens, saliva samples, and thumb and palm print impressions required by this chapter as soon as practicable after his or her receipt in a state, county, local, private, or other facility.

(f) Subject to the approval of the Director of the Federal Bureau of Investigation, persons confined or incarcerated in a federal prison or federal institution located in California who are convicted of a qualifying offense described in subdivision (a) of Section 296 or of a similar crime under the laws of the United States or any other state that would constitute an offense described in subdivision (a) of Section 296, are subject to this chapter and shall provide blood specimens, saliva samples, and thumb and palm print impressions pursuant to this chapter if any of the following apply:

(1) The person committed a qualifying offense in California.

(2) The person was a resident of California at the time of the qualifying offense.

(3) The person has any record of a California conviction for a sex or violent offense described in subdivision (a) of Section 296, regardless of when the crime was committed.

(4) The person will be released in California.

Once a federal data bank is established and accessible to the Department of Justice, the Department of Justice DNA Laboratory shall, upon the request of the United States Department of Justice, forward the samples taken pursuant to this chapter, with the exception of those taken from suspects pursuant to subdivision (b) of Section 297, to the United States Department of Justice DNA data bank laboratory. The samples and impressions required by this chapter shall be taken in accordance with the procedures set forth in subdivision (f) of Section 295.

(g) If a person who is released on parole, furlough, or other release, is returned to a state correctional institution for a violation of a condition of his or her parole, furlough, or other release, and is serving or at any time has served a term of imprisonment for committing an offense described in subdivision (a) of Section 296, and he or she did not provide specimens, samples, and print impressions pursuant to the state's DNA data bank program, the person shall submit to collection of blood

specimens, saliva samples, and thumb and palm print impressions at a state correctional institution.

This subdivision applies regardless of the crime or Penal Code violation for which a person is returned to a state correctional institution and regardless of the date the qualifying offense was committed.

SEC. 3. Section 297 of the Penal Code is amended to read:

297. (a) The laboratories of the Department of Justice that are accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB, are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and data bases in order to establish identity and origin of samples for identification purposes.

(b) (1) Except as provided in paragraph (2), a biological sample taken in the course of a criminal investigation, either voluntarily or by court order, from a person who has not been convicted, may only be compared to samples taken from that specific criminal investigation and may not be compared to any other samples from any other criminal investigation without a court order.

(2) A biological sample obtained from a suspect, as defined in paragraph (3), in a criminal investigation may be analyzed for forensic identification profiles, including DNA profiles so that the profile can be placed in a suspect data base file and searched against the DNA data bank profiles of case evidence. For the purposes of this subdivision, the DNA data bank comparison of suspect and evidence profiles may be made, by the DNA Laboratory of the Department of Justice, or any crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB.

(3) For the purposes of this subdivision, ''a suspect'' means a person against whom an information or indictment has been filed for one of the crimes listed in subdivision (a) of Section 296. For the purposes of this subdivision, a person shall remain a suspect for two years from the date of the filing of the information or indictment or until the DNA laboratory receives notification that the person has been acquitted of the charges or the charges were dismissed.

(c) All laboratories, including the Department of Justice DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank shall be accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB. Additionally, each laboratory shall submit to the Department of Justice for review the

annual report required by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB which documents the laboratory's adherence to ASCLD/LAB standards or the standards of any certifying body approved by the ASCLD/LAB. The requirements of this subdivision apply to California laboratories only and do not preclude DNA profiles developed in California from being searched in the National DNA Data Base (CODIS).

(d) Nothing in this section precludes laboratories meeting Technical Working Group on DNA Analysis Methods (TWGDAM) or Scientific Working Group on DNA Analysis Methods (SWGDAM) guidelines or standards promulgated by the DNA Advisory Board as established pursuant to Section 14131 of Title 42 of the United States Code, from performing forensic identification analyses, including DNA profiling, independent of the Department of Justice DNA and Forensic Identification Data Base and Data Bank program.

(e) The limitation on the types of offenses set forth in subdivision (a) of Section 296 as subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter.

(f) The detention, arrest, wardship, or conviction of a person based upon a data bank match or data base information is not invalidated if it is later determined that the specimens, samples, or print impressions were obtained or placed in a data bank or data base by mistake.

SEC. 4. Section 298 of the Penal Code is amended to read:

298. (a) The Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, saliva samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens, saliva samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the withdrawal of blood and shall be placed on the forms and the blood vial label. The blood vial and thumbprint forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(4) The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and data base information. The DNA laboratory procedures shall confirm that the offender qualifies for entry into the DNA data bank prior to actual entry of the information into the DNA data bank.

(c) (1) Persons authorized to draw blood under this chapter for the data bank or data base shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining saliva samples or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in placing an entry in a data bank or a data base.

SEC. 5. Section 299 of the Penal Code is amended to read:

299. (a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her information and materials expunged from the data bank when the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, the defendant has been found factually innocent of the underlying offense pursuant to Section 851.8, the defendant has been found not guilty, or the defendant has been acquitted of the underlying offense. The court issuing the reversal, dismissal, or acquittal shall order the expungement and shall send a copy of that order to the Department of Justice DNA Laboratory Director. Upon receipt of the court order, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.

(b) (1) A person whose DNA profile has been included in a data bank pursuant to this chapter may make a written request to expunge information and materials from the data bank. The person requesting the data bank entry to be expunged must send a copy of his or her request

to the trial court that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was convicted, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.

(2) Except as provided below, the Department of Justice shall expunge all identifiable information in the data bank and any criminal identification records pertaining to the person upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

(A) The written request for expungement pursuant to this section.

(B) A certified copy of the court order reversing and dismissing the conviction, or a letter from the district attorney certifying that the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.

(C) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested.

(D) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney.

(c) Upon order of the court, the Department of Justice shall destroy any specimen or sample collected from the person and any criminal identification records pertaining to the person, unless the department determines that the person has otherwise become obligated to submit a blood specimen as a result of a separate conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea.

The Department of Justice is not required to destroy an autoradiograph or other item obtained from a blood specimen if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed.

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank match is not invalidated due to a failure to expunge or a delay in expunging records.

(d) The Department of Justice DNA Laboratory shall periodically review its files to determine whether its files contain DNA reference sample profiles from suspects as defined in subdivision (b) of Section

297 who are no longer eligible for inclusion in the data bank. The DNA profiles and samples stored in the suspect data base from a person who is a suspect in a criminal investigation shall be purged within two years of the date of the filing of the information or indictment or when the DNA laboratory receives notice that the suspect was acquitted or the charges against the suspect were dismissed, whichever occurs earlier. The notice shall include a certified copy of the court order dismissing the information or indictment, a certified copy of the defendant's fingerprints and the defendant's CII number.

SEC. 6. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, saliva samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this

information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this section. This information shall be available to defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(g) Any person who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, or for other than identification purposes or purposes of parole or probation supervision, is guilty of a misdemeanor.

(h) Furnishing DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(i) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized data bank system, any of the DNA laboratory's data bases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law. All requests for statistical or research information obtained from the DNA data bank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

(j) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(k) In order to maintain the computer system security of the Department of Justice DNA and forensic identification data base and data bank program, the computer software and data base structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

(*l*) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

SEC. 7. This bill shall only become operative if both this bill and Senate Bill No. 1342 are enacted and become effective.

CHAPTER 824

An act to add and repeal Section 1255.7 of the Health and Safety Code, to add and repeal Section 271.5 of the Penal Code, and to amend, repeal, and add Sections 300, 309, and 361.5 of, and to add and repeal Section 14005.24 of, the Welfare and Institutions Code, relating to abandonment of newborns.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1255.7 is added to the Health and Safety Code, to read:

1255.7. (a) (1) A person designated pursuant to Section 271.5 of the Penal Code shall take physical custody of a minor child 72 hours old or younger pursuant to this section if the parent or other person having lawful custody of the child voluntarily surrenders physical custody of the child to that person. The person designated shall place a coded, confidential ankle bracelet on the child and provide, or make a good faith effort to provide, the parent or other person surrendering the child a copy of a unique, coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (e).

(2) The person designated shall provide, or make a good faith effort to provide, the parent or other person surrendering the child a medical information questionnaire, which may be declined, voluntarily filled out and returned at the time the child is surrendered, or later filled out and mailed in the envelope provided for this purpose. This medical information questionnaire shall not require any identifying information about the child or the parent or person surrendering the child, other than the identification code provided in the ankle bracelet placed on the child. Every questionnaire provided pursuant to this section shall begin with the following notice in no less than 12-point type:

NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON'T KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING

CANCER, ARE BEST TREATED WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE IN COMPLETING THIS QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

(b) A person taking physical custody of a minor child pursuant to this section shall provide a medical screening examination and any necessary medical care to the minor child. Notwithstanding any other provision of law, the consent of the parent or other relative shall not be required to provide that care to the minor child.

(c) As soon as possible, but in no event later than 48 hours after taking custody of a child, a person who takes physical custody of a child under this section shall notify child protective services or a county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code, that the person has physical custody of the child pursuant to this section.

(d) Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall assume temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code immediately on receipt of notice under subdivision (c). Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately investigate the circumstances of the case and file a petition pursuant to Section 311 of the Welfare and Institutions Code. Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately notify the State Department of Social Services of each such child upon taking temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code.

(e) If, prior to the filing of a petition under subdivision (d), a person who has voluntarily surrendered a child pursuant to this section requests that the hospital return the child, and the hospital still has custody of the child, the hospital shall either return the child to the person or contact a child protective agency if a health practitioner at the hospital knows or reasonably suspects that the child has been the victim of child abuse or neglect. The voluntary surrendering of a child pursuant to this section is not in and of itself a sufficient basis for reporting child abuse or neglect. The terms ''child abuse,'' ''child protective agency,'' ''health practitioner,'' ''neglect,'' and ''reasonably suspects'' shall be given the same meanings as in Article 2.5 (commencing with Section 11164) of Part 4 of Title 1 of the Penal Code.

(f) Subsequent to the filing of a petition under subdivision (d), if within 14 days of the voluntary surrender described in this section the person who surrendered custody returns to claim physical custody of the child, the child welfare agency shall verify the identity of the person, conduct an assessment of the person's circumstances and ability to parent, and request that the juvenile court dismiss the petition for dependency and order the release of the child, if the child welfare agency determines that none of the conditions described in subdivisions (a) to (d), inclusive, of Section 319 of the Welfare and Institutions Code currently exist.

(g) No person or entity that accepts a surrendered child shall be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is required or authorized by this section, including, but not limited to, instances where the child is older than 72 hours or the person surrendering the child did not have lawful physical custody of the child. The provision does not confer immunity from liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

(h) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or repeals that date.

SEC. 2. Section 271.5 is added to the Penal Code, to read:

271.5. (a) No parent or other person having lawful custody of a minor child 72 hours old or younger may be prosecuted for a violation of Section 270, 270.5, 271, or 271a if he or she voluntarily surrenders physical custody of the child to any employee, designated pursuant to this section, on duty at a public or private hospital emergency room or any additional location designated by the county board of supervisors by resolution. Each such hospital or other designated entity shall designate the classes of employees required to take custody of these children.

(b) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 3. Section 300 of the Welfare and Institutions Code is amended to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or

guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ''serious physical harm'' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, ''severe physical abuse'' means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section ''guardian'' means the legal guardian of the child.

(k) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 3.5. Section 300 is added to the Welfare and Institutions Code, to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ''serious physical harm'' does not include

reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or

her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, ''severe physical abuse'' means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian,

and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section, ''guardian'' means the legal guardian of the child.

SEC. 4. Section 309 of the Welfare and Institutions Code is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) If an able and willing relative, as defined in Section 319, is available and requests temporary placement of the child pending the detention hearing, the social worker shall initiate an emergency assessment of the relative's suitability, which shall include an in-home visit to assess the safety of the home and the ability of the relative to care for the child on a temporary basis, and a consideration of the results of a criminal records check and allegations of prior child abuse or neglect concerning the relative and other adults in the home. The results of the assessment shall be provided to the court in the social worker's report as required by Section 319.

(e) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 4.5. Section 309 is added to the Welfare and Institutions Code, to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) If an able and willing relative, as defined in Section 319, is available and requests temporary placement of the child pending the detention hearing, the social worker shall initiate an emergency assessment of the relative's suitability, which shall include an in-home visit to assess the safety of the home and the ability of the relative to care for the child on a temporary basis, and a consideration of the results of a criminal records check and allegations of prior child abuse or neglect concerning the relative and other adults in the home. The results of the assessment shall be provided to the court in the social worker's report as required by Section 319.

SEC. 5. 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; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. 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.

(j) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 5.5. Section 361.5 is added to the Welfare and Institutions Code, 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. 6. Section 14005.24 is added to the Welfare and Institutions Code, to read:

14005.24. (a) The department shall instruct counties, by means of an all county letter or similar instruction, as to the process that is to be used to ensure that each child, physical custody of whom has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code, shall be determined eligible for benefits under this chapter for, at a minimum, a period of time commencing on the date physical custody is surrendered and ending on the earliest of the following dates:

(1) The last day of the month following the month in which the child was voluntarily surrendered under Section 1255.7 of the Health and Safety Code.

(2) The date the child is reclaimed under Section 1255.7 of the Health and Safety Code.

(3) The date the child ceases to reside in California.

(b) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date.

SEC. 6.1. Sections 3.5, 4.5, and 5.5 of this act shall become operative on January 1, 2006.

SEC. 6.5. On or before January 1, 2003, January 1, 2004, and January 1, 2005, the State Department of Social Services shall report to the Legislature regarding the effect of this act, including, but not limited to, the following information:

(a) The number of children one year old or younger who are found abandoned, dead or alive, in the state for each year in which reporting is required under this act.

(b) The number of infants surrendered pursuant to this act, with their approximate age.

(c) The number of medical history questionnaires completed in those cases.

(d) The number of instances in which a parent or or other person having lawful custody seeks to reclaim custody of a surrendered child, both during and after the initial 14-day period following surrender, and the outcome of those cases.

(e) Whether a person seeking to reclaim custody is the individual who surrendered the child.

(f) The number of children surrendered pursuant to this act who show signs of neglect or abuse and the disposition of those cases.

(g) The number of parents or legal guardians eventually located and contacted by social workers.

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 825

An act to amend Sections 1367, 1371, and 1371.35 of, and to add Sections 1371.36, 1371.37, 1371.38, and 1371.39 to, the Health and Safety Code, relating to health care coverage.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Health care services must be available to citizens without unnecessary administrative procedures, interruptions, or delays.

(b) The billing by providers and the handling of claims by health care service plans are essential components of the health care delivery process and can be made more effective and efficient.

(c) The present system of claims submission by providers and the processing and payment of those claims by health care service plans are complex and are in need of reform in order to facilitate the prompt and efficient submission, processing, and payment of claims. Providers and health care service plans both recognize the problems in the current system and that there is an urgent need to resolve these matters.

(d) To ensure that health care service plans and providers do not engage in patterns of unacceptable practices, the Department of Managed Health Care should be authorized to assist in the development of a new and more efficient system of claims submission, processing, and payment.

SEC. 2. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, if applicable, each specialized health care service plan shall meet the following requirements:

(a) All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) (1) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes,

including the location and telephone number where information regarding disputes may be submitted.

(2) Each health care service plan shall ensure that a dispute resolution mechanism is accessible to noncontracting providers for the purpose of resolving billing and claims disputes.

(3) On and after January 1, 2002, each health care service plan shall annually submit a report to the department regarding its dispute resolution mechanism. The report shall include information on the number of providers who utilized the dispute resolution mechanism and a summary of the disposition of those disputes.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) No health care service plan shall require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 3. Section 1371 of the Health and Safety Code is amended to read:

1371. A health care service plan, including a specialized health care service plan, shall reimburse claims or any portion of any claim, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan, unless the claim or portion thereof is contested by the plan in which case

the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include in its payment of the claim all interest that has accrued pursuant to this section without requiring the claimant to submit a request for the interest amount. Any plan failing to comply with this requirement shall pay the claimant a ten dollar ($10) fee.

For the purposes of this section, a claim, or portion thereof, is reasonably contested where the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine payer liability for the claim includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the plan to determine the medical necessity for the health care services provided.

If a claim or portion thereof is contested on the basis that the plan has not received all information necessary to determine payer liability for the claim or portion thereof and notice has been provided pursuant to this section, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim. If a plan has received all of the information necessary to determine payer liability for a contested claim and has not reimbursed a claim it has determined to be payable within 30 working days of the receipt of that information, or if the plan is a health maintenance organization, within 45 working days of receipt of that information, interest shall accrue and be payable at a rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period.

The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services.

SEC. 4. Section 1371.35 of the Health and Safety Code is amended to read:

1371.35. (a) A health care service plan, including a specialized health care service plan, shall reimburse each complete claim, or portion thereof, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the complete claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the complete claim by the health care service plan. However, a plan may contest or deny a claim, or portion thereof, by notifying the claimant, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim, or portion thereof, is contested shall identify the portion of the claim that is contested, by revenue code, and the specific information needed from the provider to reconsider the claim. The notice that a claim, or portion thereof, is denied shall identify the portion of the claim that is denied, by revenue code, and the specific reasons for the denial. A plan may delay payment of an uncontested portion of a complete claim for reconsideration of a contested portion of that claim so long as the plan pays those charges specified in subdivision (b).

(b) If a complete claim, or portion thereof, that is neither contested nor denied, is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(c) For the purposes of this section, a claim, or portion thereof, is reasonably contested if the plan has not received the completed claim. A paper claim from an institutional provider shall be deemed complete upon submission of a legible emergency department report and a completed UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. An electronic claim from an institutional provider shall be deemed complete upon submission of an electronic equivalent to the UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. However, if the plan requests a copy of the emergency department report within the 30 working days after receipt of the electronic claim from the institutional provider, the plan may also

request additional reasonable relevant information within 30 working days of receipt of the emergency department report, at which time the claim shall be deemed complete. A claim from a professional provider shall be deemed complete upon submission of a completed HCFA 1500 or its electronic equivalent or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. The provider shall provide the plan reasonable relevant information within 10 working days of receipt of a written request that is clear and specific regarding the information sought. If, as a result of reviewing the reasonable relevant information, the plan requires further information, the plan shall have an additional 15 working days after receipt of the reasonable relevant information to request the further information, notwithstanding any time limit to the contrary in this section, at which time the claim shall be deemed complete.

(d) This section shall not apply to claims about which there is evidence of fraud and misrepresentation, to eligibility determinations, or in instances where the plan has not been granted reasonable access to information under the provider's control. A plan shall specify, in a written notice sent to the provider within the respective 30- or 45-working days of receipt of the claim, which, if any, of these exceptions applies to a claim.

(e) If a claim or portion thereof is contested on the basis that the plan has not received information reasonably necessary to determine payer liability for the claim or portion thereof, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim. If a claim, or portion thereof, undergoing reconsideration is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt of the additional information, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(f) The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services. This section shall not be construed to prevent a plan from assigning, by a written contract, the responsibility to pay interest and late charges pursuant to this section to medical groups, independent practice associations, or other entities.

(g) A plan shall not delay payment on a claim from a physician or other provider to await the submission of a claim from a hospital or other provider, without citing specific rationale as to why the delay was necessary and providing a monthly update regarding the status of the claim and the plan's actions to resolve the claim, to the provider that submitted the claim.

(h) A health care service plan shall not request or require that a provider waive its rights pursuant to this section.

(i) This section shall not apply to capitated payments.

(j) This section shall apply only to claims for services rendered to a patient who was provided emergency services and care as defined in Section 1317.1 in the United States on or after September 1, 1999.

(k) This section shall not be construed to affect the rights or obligations of any person pursuant to Section 1371.

(*l*) This section shall not be construed to affect a written agreement, if any, of a provider to submit bills within a specified time period.

SEC. 5. Section 1371.36 is added to the Health and Safety Code, to read:

1371.36. (a) A health care service plan shall not deny payment of a claim on the basis that the plan, medical group, independent practice association, or other contracting entity did not provide authorization for health care services that were provided in a licensed acute care hospital and that were related to services that were previously authorized, if all of the following conditions are met:

(1) It was medically necessary to provide the services at the time.

(2) The services were provided after the plan's normal business hours.

(3) The plan does not maintain a system that provides for the availability of a plan representative or an alternative means of contact through an electronic system, including voicemail or electronic mail, whereby the plan can respond to a request for authorization within 30 minutes of the time that a request was made.

(b) This section shall not apply to investigational or experimental therapies, or other noncovered services.

SEC. 6. Section 1371.37 is added to the Health and Safety Code, to read:

1371.37. (a) A health care service plan is prohibited from engaging in an unfair payment pattern, as defined in this section.

(b) Consistent with subdivision (a) of Section 1371.39, the director may investigate a health care service plan to determine whether it has engaged in an unfair payment pattern.

(c) An ''unfair payment pattern,'' as used in this section, means any of the following:

(1) Engaging in a demonstrable and unjust pattern, as defined by the department, of reviewing or processing complete and accurate claims that results in payment delays.

(2) Engaging in a demonstrable and unjust pattern, as defined by the department, of reducing the amount of payment or denying complete and accurate claims.

(3) Failing on a repeated basis to pay the uncontested portions of a claim within the timeframes specified in Section 1371, 1371.1, or 1371.35.

(4) Failing on a repeated basis to automatically include the interest due on claims pursuant to Section 1371.

(d) (1) Upon a final determination by the director that a health care service plan has engaged in an unfair payment pattern, the director may:

(A) Impose monetary penalties as permitted under this chapter.

(B) Require the health care service plan for a period of three years from the date of the director's determination, or for a shorter period prescribed by the director, to pay complete and accurate claims from the provider within a shorter period of time than that required by Section 1371. The provisions of this subparagraph shall not become operative until January 1, 2002.

(C) Include a claim for costs incurred by the department in any administrative or judicial action, including investigative expenses and the cost to monitor compliance by the plan.

(2) For any overpayment made by a health care service plan while subject to the provisions of paragraph (1), the provider shall remain liable to the plan for repayment pursuant to Section 1371.1.

(e) The enforcement remedies provided in this section are not exclusive and shall not limit or preclude the use of any otherwise available criminal, civil, or administrative remedy.

(f) The penalties set forth in this section shall not preclude, suspend, affect, or impact any other duty, right, responsibility, or obligation under a statute or under a contract between a health care service plan and a provider.

(g) A health care service plan may not delegate any statutory liability under this section.

(h) For the purposes of this section, ''complete and accurate claim'' has the same meaning as that provided in the regulations adopted by the department pursuant to subdivision (a) of Section 1371.38.

(i) On or before December 31, 2001, the department shall report to the Legislature and the Governor information regarding the development of the definition of ''unjust pattern'' as used in this section. This report shall include, but not be limited to, a description of the process used and a list of the parties involved in the department's development of this definition as well as recommendations for statutory adoption.

(j) The department shall make available upon request and on its web site, information regarding actions taken pursuant to this section, including a description of the activities that were the basis for the action.

SEC. 7. Section 1371.38 is added to the Health and Safety Code, to read:

1371.38. (a) The department shall, on or before July 1, 2001, adopt regulations that ensure that plans have adopted a dispute resolution mechanism pursuant to subdivision (h) of Section 1367. The regulations shall require that any dispute resolution mechanism of a plan is fair, fast, and cost-effective for contracting and noncontracting providers and define the term ''complete and accurate claim, including attachments and supplemental information or documentation.''

(b) On or before December 31, 2001, the department shall report to the Governor and the Legislature its recommendations for any additional statutory requirements relating to plan and provider dispute resolution mechanisms.

SEC. 8. Section 1371.39 is added to the Health and Safety Code, to read:

1371.39. (a) Providers may report to the department's Office of Plan and Provider Relations, either through the toll-free provider line (877-525-1295) or e-mail address (plans-providers@dmhc.ca.gov), instances in which the provider believes a plan is engaging in an unfair payment pattern.

(b) Plans may report to the department's Office of Plan and Provider Relations, either through the toll-free provider line (877-525-1295) or e-mail address (plans-providers@dmhc.ca.gov), instances in which the plan believes a provider is engaging in an unfair billing pattern.

(1) ''Unfair billing pattern'' means engaging in a demonstrable and unjust pattern of unbundling of claims, upcoding of claims, or other demonstrable and unjustified billing patterns, as defined by the department.

(2) The department shall convene appropriate state agencies to make recommendations by July 1, 2001, to the Legislature and the Governor for the purpose of developing a system for responding to unfair billing patterns as defined in this section. This section shall include a process by which information is made available to the public regarding actions taken against providers for unfair billing patterns and the activities that were the basis for the action.

(c) On or before December 31, 2001, the department shall report to the Legislature and the Governor information regarding the development of the definition of ''unfair billing pattern'' as used in this section. This report shall include, but not be limited to, a description of the process used and a list of the parties involved in the department's

development of this definition as well as recommendations for statutory adoption.

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 826

An act relating to health services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. (a) The sum of twenty-four million eight hundred three thousand dollars ($24,803,000) is appropriated from the Cigarette and Tobacco Products Surtax Fund for allocation for the 2000–01 fiscal year from the following accounts:

(1) Nine million fifteen thousand dollars ($9,015,000) from the Hospital Services Account.

(2) Two million three hundred twenty-eight thousand dollars ($2,328,000) from the Physician Services Account.

(3) Thirteen million four hundred sixty thousand dollars ($13,460,000) from the Unallocated Account.

(b) Funds appropriated pursuant to subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars ($22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code, as provided in this act.

(2) Two million four hundred seventy-nine thousand dollars ($2,479,000) shall be administered and allocated through the Rural Health Services (RHS) program, Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code, as provided in this act.

(c) Funds appropriated by this act from the Physician Services Account and the Unallocated Account in the Cigarette and Tobacco Product Surtax Fund shall be used only for the reimbursement of uncompensated emergency services as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the Physician Services Account in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code.

(d) Funds appropriated by this act from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for reimbursement of uncompensated emergency services, as defined in Section 16953 of the Welfare and Institutions Code, provided in general acute care hospitals providing basic, comprehensive, or standby emergency services. Reimbursement for emergency services shall be consistent with the provisions of Section 16952 of the Welfare and Institutions Code.

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:

There is a well documented crisis in emergency medicine in California, including the closing of hospital emergency departments and the unavailability of on-call physician specialists to backup emergency physicians in hospital emergency departments. One of the causes of this crisis is a lack of funding for uninsured patients. In order that Proposition 99 funds may be allocated to emergency and on-call physicians as soon as possible, and help alleviate the crisis in emergency medicine, it is necessary that this act take effect immediately.

CHAPTER 827

An act to amend Sections 1367, 1371, and 1371.35 of, and to add Sections 1371.36, 1371.37, 1371.38, and 1371.39 to, the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Health care services must be available to citizens without unnecessary administrative procedures, interruptions, or delays.

(b) The billing by providers and the handling of claims by health care service plans are essential components of the health care delivery process and can be made more effective and efficient.

(c) The present system of claims submission by providers and the processing and payment of those claims by health care service plans are complex and are in need of reform in order to facilitate the prompt and efficient submission, processing, and payment of claims. Providers and health care service plans both recognize the problems in the current system and that there is an urgent need to resolve these matters.

(d) To ensure that health care service plans and providers do not engage in patterns of unacceptable practices, the Department of Managed Health Care should be authorized to assist in the development of a new and more efficient system of claims submission, processing, and payment.

SEC. 2. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, if applicable, each specialized health care service plan shall meet the following requirements:

(a) All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) (1) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(2) Each health care service plan shall ensure that a dispute resolution mechanism is accessible to noncontracting providers for the purpose of resolving billing and claims disputes.

(3) On and after January 1, 2002, each health care service plan shall annually submit a report to the department regarding its dispute resolution mechanism. The report shall include information on the number of providers who utilized the dispute resolution mechanism and a summary of the disposition of those disputes.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the director may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The director shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(j) No health care service plan shall require registration under the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.) as a condition for participation by an optometrist certified to use therapeutic

pharmaceutical agents pursuant to Section 3041.3 of the Business and Professions Code.

Nothing in this section shall be construed to permit the director to establish the rates charged subscribers and enrollees for contractual health care services.

The director's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 3. Section 1371 of the Health and Safety Code is amended to read:

1371. A health care service plan, including a specialized health care service plan, shall reimburse claims or any portion of any claim, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan, unless the claim or portion thereof is contested by the plan in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include in its payment of the claim all interest that has accrued pursuant to this section without requiring the claimant to submit a request for the interest amount. Any plan failing to comply with this requirement shall pay the claimant a ten dollar ($10) fee.

For the purposes of this section, a claim, or portion thereof, is reasonably contested where the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine payer liability for the claim includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the plan to determine the medical necessity for the health care services provided.

If a claim or portion thereof is contested on the basis that the plan has not received all information necessary to determine payer liability for the claim or portion thereof and notice has been provided pursuant to this section, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim. If a plan has received all of the information necessary to determine payer liability for a contested claim and has not reimbursed a claim it has determined to be payable within 30 working days of the receipt of that information, or if the plan is a health maintenance organization, within 45 working days of receipt of that information, interest shall accrue and be payable at a rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working day period.

The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services.

SEC. 4. Section 1371.35 of the Health and Safety Code is amended to read:

1371.35. (a) A health care service plan, including a specialized health care service plan, shall reimburse each complete claim, or portion thereof, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the complete claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the complete claim by the health care service plan. However, a plan may contest or deny a claim, or portion thereof, by notifying the claimant, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim, or portion thereof, is contested shall identify the portion of the claim that is contested, by revenue code, and the specific information needed from the provider to reconsider the claim. The notice that a claim, or portion thereof, is denied shall identify the portion of the claim that is denied, by revenue code, and the specific reasons for the denial. A plan may delay payment of an uncontested portion of a complete claim for reconsideration of a contested portion of that claim so long as the plan pays those charges specified in subdivision (b).

(b) If a complete claim, or portion thereof, that is neither contested nor denied, is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 15 percent per annum beginning with the first calendar day after the

30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(c) For the purposes of this section, a claim, or portion thereof, is reasonably contested if the plan has not received the completed claim. A paper claim from an institutional provider shall be deemed complete upon submission of a legible emergency department report and a completed UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. An electronic claim from an institutional provider shall be deemed complete upon submission of an electronic equivalent to the UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. However, if the plan requests a copy of the emergency department report within the 30 working days after receipt of the electronic claim from the institutional provider, the plan may also request additional reasonable relevant information within 30 working days of receipt of the emergency department report, at which time the claim shall be deemed complete. A claim from a professional provider shall be deemed complete upon submission of a completed HCFA 1500 or its electronic equivalent or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. The provider shall provide the plan reasonable relevant information within 10 working days of receipt of a written request that is clear and specific regarding the information sought. If, as a result of reviewing the reasonable relevant information, the plan requires further information, the plan shall have an additional 15 working days after receipt of the reasonable relevant information to request the further information, notwithstanding any time limit to the contrary in this section, at which time the claim shall be deemed complete.

(d) This section shall not apply to claims about which there is evidence of fraud and misrepresentation, to eligibility determinations, or in instances where the plan has not been granted reasonable access to information under the provider's control. A plan shall specify, in a written notice sent to the provider within the respective 30- or 45-working days of receipt of the claim, which, if any, of these exceptions applies to a claim.

(e) If a claim or portion thereof is contested on the basis that the plan has not received information reasonably necessary to determine payer liability for the claim or portion thereof, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional

information to complete reconsideration of the claim. If a claim, or portion thereof, undergoing reconsideration is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt of the additional information, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 15 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(f) The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services. This section shall not be construed to prevent a plan from assigning, by a written contract, the responsibility to pay interest and late charges pursuant to this section to medical groups, independent practice associations, or other entities.

(g) A plan shall not delay payment on a claim from a physician or other provider to await the submission of a claim from a hospital or other provider, without citing specific rationale as to why the delay was necessary and providing a monthly update regarding the status of the claim and the plan's actions to resolve the claim, to the provider that submitted the claim.

(h) A health care service plan shall not request or require that a provider waive its rights pursuant to this section.

(i) This section shall not apply to capitated payments.

(j) This section shall apply only to claims for services rendered to a patient who was provided emergency services and care as defined in Section 1317.1 in the United States on or after September 1, 1999.

(k) This section shall not be construed to affect the rights or obligations of any person pursuant to Section 1371.

(*l*) This section shall not be construed to affect a written agreement, if any, of a provider to submit bills within a specified time period.

SEC. 5. Section 1371.36 is added to the Health and Safety Code, to read:

1371.36. (a) A health care service plan shall not deny payment of a claim on the basis that the plan, medical group, independent practice association, or other contracting entity did not provide authorization for health care services that were provided in a licensed acute care hospital and that were related to services that were previously authorized, if all of the following conditions are met:

(1) It was medically necessary to provide the services at the time.

(2) The services were provided after the plan's normal business hours.

(3) The plan does not maintain a system that provides for the availability of a plan representative or an alternative means of contact through an electronic system, including voicemail or electronic mail, whereby the plan can respond to a request for authorization within 30 minutes of the time that a request was made.

(b) This section shall not apply to investigational or experimental therapies, or other noncovered services.

SEC. 6. Section 1371.37 is added to the Health and Safety Code, to read:

1371.37. (a) A health care service plan is prohibited from engaging in an unfair payment pattern, as defined in this section.

(b) Consistent with subdivision (a) of Section 1371.39, the director may investigate a health care service plan to determine whether it has engaged in an unfair payment pattern.

(c) An ''unfair payment pattern,'' as used in this section, means any of the following:

(1) Engaging in a demonstrable and unjust pattern, as defined by the department, of reviewing or processing complete and accurate claims that results in payment delays.

(2) Engaging in a demonstrable and unjust pattern, as defined by the department, of reducing the amount of payment or denying complete and accurate claims.

(3) Failing on a repeated basis to pay the uncontested portions of a claim within the timeframes specified in Section 1371, 1371.1, or 1371.35.

(4) Failing on a repeated basis to automatically include the interest due on claims pursuant to Section 1371.

(d) (1) Upon a final determination by the director that a health care service plan has engaged in an unfair payment pattern, the director may:

(A) Impose monetary penalties as permitted under this chapter.

(B) Require the health care service plan for a period of three years from the date of the director's determination, or for a shorter period prescribed by the director, to pay complete and accurate claims from the provider within a shorter period of time than that required by Section 1371. The provisions of this subparagraph shall not become operative until January 1, 2002.

(C) Include a claim for costs incurred by the department in any administrative or judicial action, including investigative expenses and the cost to monitor compliance by the plan.

(2) For any overpayment made by a health care service plan while subject to the provisions of paragraph (1), the provider shall remain liable to the plan for repayment pursuant to Section 1371.1.

(e) The enforcement remedies provided in this section are not exclusive and shall not limit or preclude the use of any otherwise available criminal, civil, or administrative remedy.

(f) The penalties set forth in this section shall not preclude, suspend, affect, or impact any other duty, right, responsibility, or obligation under a statute or under a contract between a health care service plan and a provider.

(g) A health care service plan may not delegate any statutory liability under this section.

(h) For the purposes of this section, ''complete and accurate claim'' has the same meaning as that provided in the regulations adopted by the department pursuant to subdivision (a) of Section 1371.38.

(i) On or before December 31, 2001, the department shall report to the Legislature and the Governor information regarding the development of the definition of ''unjust pattern'' as used in this section. This report shall include, but not be limited to, a description of the process used and a list of the parties involved in the department's development of this definition as well as recommendations for statutory adoption.

(j) The department shall make available upon request and on its website, information regarding actions taken pursuant to this section, including a description of the activities that were the basis for the action.

SEC. 7. Section 1371.38 is added to the Health and Safety Code, to read:

1371.38. (a) The department shall, on or before July 1, 2001, adopt regulations that ensure that plans have adopted a dispute resolution mechanism pursuant to subdivision (h) of Section 1367. The regulations shall require that any dispute resolution mechanism of a plan is fair, fast, and cost-effective for contracting and non-contracting providers and define the term ''complete and accurate claim, including attachments and supplemental information or documentation.''

(b) On or before December 31, 2001, the department shall report to the Governor and the Legislature its recommendations for any additional statutory requirements relating to plan and provider dispute resolution mechanisms.

SEC. 8. Section 1371.39 is added to the Health and Safety Code, to read:

1371.39. (a) Providers may report to the department's Office of Plan and Provider Relations, either through the toll-free provider line (877-525-1295) or e-mail address (plans-providers@dmhc.ca.gov), instances in which the provider believes a plan is engaging in an unfair payment pattern.

(b) Plans may report to the department's Office of Plan and Provider Relations, either through the toll-free provider line (877-525-1295) or

e-mail address (plans-providers@dmhc.ca.gov), instances in which the plan believes a provider is engaging in an unfair billing pattern.

(1) ''Unfair billing pattern'' means engaging in a demonstrable and unjust pattern of unbundling of claims, upcoding of claims, or other demonstrable and unjustified billing patterns, as defined by the department.

(2) The department shall convene appropriate state agencies to make recommendations by July 1, 2001, to the Legislature and the Governor for the purpose of developing a system for responding to unfair billing patterns as defined in this section. This section shall include a process by which information is made available to the public regarding actions taken against providers for unfair billing patterns and the activities that were the basis for the action.

(c) On or before December 31, 2001, the department shall report to the Legislature and the Governor information regarding the development of the definition of ''unfair billing pattern'' as used in this section. This report shall include, but not be limited to, a description of the process used and a list of the parties involved in the department's development of this definition as well as recommendations for statutory adoption.

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 828

An act relating to emergency health care.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. (a) (1) The Senate Office of Research shall conduct a comprehensive study of the hospital emergency room department on-call coverage issue in California.

(2) The study required by paragraph (1) shall include, but not be limited to, the magnitude of the challenges facing California hospital

emergency room departments, including those in underserved and rural areas, the scope of the challenges facing other states relative to these issues, and how other states have addressed these complex and challenging issues.

(b) The Senate Office of Research shall convene a working group of affected California stakeholders, including, but not limited to, hospitals, hospital organizations, physician organizations, physician representatives, including emergency room physicians and other on-call specialists, and payors, and state agencies as appropriate.

(c) The Senate Office of Research shall report to the Legislature by January 1, 2002. The report shall include recommendations to address the California hospital emergency room on-call issues.

CHAPTER 829

An act to add Sections 1639.56 and 7150.2 to the Health and Safety Code, relating to public health, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 1639.56 is added to the Health and Safety Code, to read:

1639.56. The department shall submit a report to the Legislature no later than January 1, 2003, including, but not limited to, examining and evaluating all of the following:

(a) Administrative expenditures of tissue banks.

(b) Current use of informed consent by tissue banks in tissue donation and recovery, including recommendations for improving and expanding informed consent policy.

(c) Full disclosure requirements by tissue banks to the donor or the person authorized to make a donation on behalf of a decedent of all potential uses of donated and recovered tissues.

(d) A system in which individuals with medically necessary conditions for which donated tissues are part of the prescribed treatment are given priority in receiving donated tissues, and the feasibility of state subsidies to implement the system.

(e) The current process for tissue recovery and distribution, including recommendations for improvement, where necessary.

SEC. 2. Section 7150.2 is added to the Health and Safety Code, to read:

7150.2. (a) The State Department of Health Services shall have oversight and regulatory authority with respect to the implementation in this state of the Uniform Anatomical Gift Act.

(b) The State Department of Health Services shall adopt regulations that provide for the implementation of this chapter. Regulations adopted pursuant to this section shall include, but not be limited to, providing public awareness of being an organ and tissue donor and of the importance of informed consent prior to donation.

(c) (1) It is the intent of the Legislature that no provision of this section be construed to be in conflict with federal law.

(2) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. There is hereby appropriated the sum of two hundred fifty thousand dollars ($250,000) from the Tissue Bank License Fund to the department in order to prepare the report required by Section 1639.56 of the Health and Safety Code.

CHAPTER 830

An act to amend Section 27491.45 of the Government Code, and to amend Sections 7151.5, 7153, 7153.5, and 7154 of the Health and Safety Code, relating to dead bodies.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

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

SECTION 1. Section 27491.45 of the Government Code is amended to read:

27491.45. (a) (1) The coroner shall have the right to retain parts of the body, as defined in subdivision (g) of Section 7150.1 of the Health and Safety Code, removed at the time of autopsy or acquired during a coroner's investigation as may, in the opinion of the coroner, be necessary or advisable for scientific investigation and training. The coroner may employ or use outside laboratories, hospitals, or research institutions in the conduct of the coroner's scientific investigation or training.

(2) Parts of the body retained pursuant to paragraph (1) may be released by the coroner to hospitals, medical educational research institutions, and law enforcement agencies for noncoroner training,

educational, and research purposes, either upon consent of the decedent or other person, as specified in Section 7151 of the Health and Safety Code, or after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of the Health and Safety Code of their option to consent or object to the release, and the appropriate person consents or that effort has been unsuccessful. A reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151 of the Health and Safety Code.

(b) The coroner may, in his or her discretion, allow removal of parts of the body by a licensed physician and surgeon or trained transplant technician for transplant, or therapeutic, or scientific purposes pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, only if the following conditions are met:

(1) The provision of the part will not unnecessarily mutilate the body or interfere with the autopsy.

(2) The decedent or other person, as specified in Section 7151 of the Health and Safety Code, has consented to the provision of the part, as prescribed by Section 7154 of the Health and Safety Code, or after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of the Health and Safety Code of their option to consent or object to the release, and the appropriate person consents, or that effort has been unsuccessful. A reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151 of the Health and Safety Code. In obtaining this gift, the coroner shall notify the donor of the specific part or parts requested and shall obtain the donor's informed consent, as provided in Section 7150.5 or 7151 of the Health and Safety Code.

(c) Nothing in this section shall be construed as limiting any right provided for in Section 7152 of the Health and Safety Code.

(d) For purposes of this section, ''trained transplant technician'' means a person who has completed training in tissue removal for

transplant or therapeutic, or scientific purposes, which the coroner determines to be adequate for the purposes.

SEC. 2. Section 7151.5 of the Health and Safety Code is amended to read:

7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner may release and permit the removal of a part from a body within that official's custody, for transplantation, therapy, or reconditioning, if all of the following occur:

(1) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization or, in the case of a pacemaker, from a person who reconditions pacemakers.

(2) A reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to making, an anatomical gift. Except in the case where the useful life of the part does not permit, a reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151.

(3) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in subdivision (a) of Section 7151.

(4) The removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator.

(5) The removal will not interfere with any autopsy or investigation.

(6) The removal will be in accordance with accepted medical standards.

(7) Cosmetic restoration will be done, if appropriate.

(b) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner, a hospital may release and permit the removal of a part from a body if the hospital, after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to making, an anatomical gift, determines and certifies that the persons are not available. A search for the persons listed in subdivision (a) of Section 7151 may be initiated in anticipation of death, but, except in the case where the useful life of the part does not permit, the determination may not be made until the search has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital,

accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151.

(c) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner or a hospital, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation, therapy, or reconditioning if the requirements of subdivision (a) are met.

(d) An official or hospital releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, any required written or recorded telephonic consent, and the person to whom it was released.

(e) In the case of corneal material to be used for the purpose of transplantation, the official releasing and permitting the removal of the corneal material and the requesting entity shall obtain and keep on file for not less than three years a copy of any one of the following:

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

(2) Proof of the existence of a recorded telephonic consent by the donor or any person specified in Section 7151 in the form of an audio tape recording of the conversation or a transcript of the recorded conversation, which indicates the general intended use of the tissue.

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

These requirements are necessary only if the official agency chooses to participate in the transfer of corneal tissue with the requesting entity.

(f) Neither the coroner nor medical examiner authorizing the removal of a body part or tissue, nor any hospital, medical center, tissue bank, storage facility, or person acting upon the request, order, or direction of the coroner or medical examiner in the removal of a body part or tissue pursuant to this section, shall incur civil liability for the removal in an action brought by any person who did not object prior to the removal of the body part or tissue, nor be subject to criminal prosecution for the removal of the body part or tissue pursuant to this section.

SEC. 3. Section 7153 of the Health and Safety Code is amended to read:

7153. (a) Only the following persons may become donees of anatomical gifts for the purposes stated:

(1) A hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.

(2) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science.

(3) A designated individual for transplantation or therapy needed by that individual.

(4) In the case of a pacemaker, a person who reconditions pacemakers.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or, in the case of a pacemaker, the pacemaker may be accepted by any person who reconditions pacemakers.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under subdivision (a) of Section 7151, the donee may not accept the anatomical gift.

SEC. 4. Section 7153.5 of the Health and Safety Code is amended to read:

7153.5. (a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, accredited medical or dental school, college, or university, or, in the event that the gift is for transplantation or therapy only, to a procurement organization that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

SEC. 5. Section 7154 of the Health and Safety Code is amended to read:

7154. (a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under subdivision (b) of Section 7155.5. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body or a pacemaker, the donee, upon the death of the donor and before embalming, shall cause the part or pacemaker to be removed without unnecessary mutilation. After removal of the part or pacemaker, custody

of the remainder of the body vests in the person specified in Section 7100.

(b) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to subdivision (d) of Section 7150.5.

(c) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

(d) For all donations made pursuant to an document of gift executed after January 1, 2001, following the final disposition of the remains of the donor, upon request of a person specified in Section 7100, the donee shall return the cremated remains of the donor at no cost to the person specified in Section 7100, unless the donor has previously designated otherwise in the document of gift. A person who knowingly returns the cremated remains of a person other than the donor to a person specified in Section 7100 shall be punished by imprisonment in the county jail for not more than one year.

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 831

An act to add Section 25241 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 25241 is added to the Business and Professions Code, to read:

25241. (a) (1) The Legislature finds and declares that for more than a century, Napa Valley and Napa County have been widely recognized for producing grapes and wine of the highest quality. Both consumers and the wine industry understand the name Napa County and the viticultural area appellations of origin contained within Napa County (collectively ''Napa appellations'') as denoting that the wine was created with the distinctive grapes grown in Napa County.

(2) The Legislature finds, however, that certain producers are using Napa appellations on labels, on packaging materials, and in advertising for wines that are not made from grapes grown in Napa County, and that consumers are confused and deceived by these practices.

(3) The Legislature further finds that legislation is necessary to eliminate these misleading practices. It is the intent of the Legislature to assure consumers that the wines produced or sold in the state with brand names, packaging materials, or advertising referring to Napa appellations in fact qualify for the Napa County appellation of origin.

(b) No wine produced, bottled, labeled, offered for sale or sold in California shall use, in a brand name or otherwise, on any label, packaging material, or advertising, any of the names of viticultural significance listed in subdivision (c), unless that wine qualifies under Section 4.25a of Title 27 of the Code of Federal Regulations for the appellation of origin Napa County and includes on the label, packaging material, and advertising that appellation or a viticultural area appellation of origin that is located entirely within Napa County, subject to compliance with Section 25240.

Notwithstanding the above, this subdivision shall not grant any labeling, packaging, or advertising rights that are prohibited under federal law or regulations.

(c) The following are names of viticultural significance for purposes of this section:

(1) Napa.

(2) Any viticultural area appellation of origin established pursuant to Part 9 (commencing with Section 9.1) of Title 27 of the Code of Federal Regulations that is located entirely within Napa County.

(3) Any similar name to those in paragraph (1) or (2) that is likely to cause confusion as to the origin of the wine.

(d) The appellation of origin required by this section shall meet the legibility and size-of-type requirements set forth in either Section 4.38 or Section 4.63 of Title 27 of the Code of Federal Regulations, whichever is applicable.

(e) Notwithstanding subdivision (b), any name of viticultural significance may appear either as part of the address required by Sections 4.35 and 4.62 of Title 27 of the Code of Federal Regulations, if it is also the post office address of the bottling or producing winery or of the

permittee responsible for the advertising, or as part of any factual, nonmisleading statement as to the history or location of the winery.

(f) The department may suspend or revoke the license of any person who produces or bottles wine who violates this section. Following notice of violation to the person in possession of the wine and a hearing to be held within 15 days thereafter, if requested by any interested party within five days following the notice, the department may seize wine labeled or packaged in violation of this section regardless of where found, and may dispose of the wine upon order of the department. From the time of notice until the departmental determination, the wine shall not be sold or transferred.

(g) This section applies only to wine which is produced, bottled, or labeled after January 1, 2001.

CHAPTER 832

An act to amend Section 65080 of, and to add Section 65080.3 to, the Government Code, relating to transportation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

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

(a) The Legislature is concerned about increasing traffic congestion and its impacts on California's economic growth and quality of life.

(b) This act is intended to improve California's long-range transportation planning by including the preparation of alternative long-range transportation plans that have the possibility of offering methods to reduce traffic congestion.

SEC. 2. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each

transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

(i) Single occupant vehicle.

(ii) Multiple occupant vehicle or carpool.

(iii) Public transit including commuter rail and intercity rail.

(iv) Walking.

(v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(G) For the region defined in Section 66502, the indicators specified in this paragraph shall be supplanted by the performance measurement criteria established pursuant to subdivision (e) of Section 66535, if that subdivision is added to the Government Code by Section 1 of Senate Bill 1995 of the 1999–2000 Regular Session.

(2) An action element that describes the programs and actions necessary to implement the plan and assigns implementation

responsibilities. The action element may describe all projects proposed for development during the 20-year life of the plan.

The action element shall consider congestion management programming activities carried out within the region.

(3) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

(i) State highway expansion.

(ii) State highway rehabilitation, maintenance, and operations.

(iii) Local road and street expansion.

(iv) Local road and street rehabilitation, maintenance, and operation.

(v) Mass transit, commuter rail, and intercity rail expansion.

(vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.

(vii) Pedestrian and bicycle facilities.

(viii) Environmental enhancements and mitigation.

(ix) Research and planning.

(x) Other categories.

(c) Each transportation planning agency shall adopt and submit, every three years beginning by September 1, 2001, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. The plan shall be consistent with federal planning and programming requirements. A transportation planning agency that does not contain an urbanized area may at its option adopt and submit a regional transportation plan once every four years beginning by September 1, 2001. Prior to adoption of the regional transportation plan, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 3. Section 65080.3 is added to the Government Code, to read:

65080.3. (a) Each transportation planning agency with a population that exceeds 200,000 persons may prepare at least one ''alternative planning scenario'' for presentation to local officials, agency board members, and the public during the development of the triennial regional transportation plan and the hearing required under subdivision (c) of Section 65080.

(b) The alternative planning scenario shall accommodate the same amount of population growth as projected in the plan but shall be based on an alternative that attempts to reduce the growth in traffic congestion, make more efficient use of existing transportation infrastructure, and reduce the need for costly future public infrastructure.

(c) The alternative planning scenario shall be developed in collaboration with a broad range of public and private stakeholders, including local elected officials, city and county employees, relevant interest groups, and the general public. In developing the scenario, the agency shall consider all of the following:

(1) Increasing housing and commercial development around transit facilities and in close proximity to jobs and commercial activity centers.

(2) Encouraging public transit usage, ridesharing, walking, bicycling, and transportation demand management practices.

(3) Promoting a more efficient mix of current and future job sites, commercial activity centers, and housing opportunities.

(4) Promoting use of urban vacant land and ''brownfield'' redevelopment.

(5) An economic incentive program that may include measures such as transit vouchers and variable pricing for transportation.

(d) The planning scenario shall be included in a report evaluating all of the following:

(1) The amounts and locations of traffic congestion.

(2) Vehicle miles traveled and the resulting reduction in vehicle emissions.

(3) Estimated percentage share of trips made by each means of travel specified in subparagraph (C) of paragraph (1) of subdivision (b) of Section 65080.

(4) The costs of transportation improvements required to accommodate the population growth in accordance with the alternative scenario.

(5) The economic, social, environmental, regulatory, and institutional barriers to the scenario being achieved.

(e) If the adopted regional transportation plan already achieves one or more of the objectives set forth in subdivision (c), those objectives need not be discussed or evaluated in the alternative planning scenario.

(f) The alternative planning scenario and accompanying report shall not be adopted as part of the regional transportation plan, but it shall be

distributed to cities and counties within the region and to other interested parties, and may be a basis for revisions to the transportation projects that will be included in the regional transportation plan.

(g) Nothing in this section grants transportation planning agencies any direct or indirect authority over local land use decisions.

(h) This section does not apply to a transportation plan adopted on or before September 1, 2001, proposed by a transportation planning agency with a population of less than 1,000,000 persons.

CHAPTER 833

An act to add Section 51220.4 to the Education Code, to add Article 4 (commencing with Section 894.6) to Chapter 8 of Division 1 of the Streets and Highways Code, and to amend Sections 1666, 21455.6, 21950, 21956, and 42001 of, and to add Sections 11113.3, 11219.3, 21949, 21950.5, 21970, 21971, 42001.17, and 42001.18 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. This act shall be known and may be cited as the Pedestrian Safety Act of 2000.

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

(a) Pedestrians account for more than 20 percent of all traffic fatalities in California.

(b) Pedestrian fatalities are the second leading cause of accidental death for California children five to twelve years of age.

(c) Nearly 5,000 pedestrians are injured every year on California's streets and highways.

(d) Pedestrian safety projects currently receive less than one percent of all transportation funding in California.

(e) It is in the best interest of the people of the State of California that the Legislature adopt policies that address pedestrian safety and recognize the priority of pedestrian safety projects in overall transportation spending.

SEC. 3. (a) Notwithstanding Provision 4 of Item 2660-101-0042 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000), the amount appropriated pursuant to that provision shall be transferred to the Pedestrian Safety Account in the State Transportation Fund.

(b) The enactment of this act constitutes implementation of Provision 4 of Item 2660-101-0042 of Section 2.00 of the Budget Act of 2000 within the meaning of that provision.

SEC. 3.1. Section 51220.4 is added to the Education Code, to read:

51220.4. For purposes of subdivision (j) of Section 51220, a course in automobile driver education shall include, but is not limited to, education regarding the rights and duties of a motorist as those rights and duties pertain to pedestrians and the rights and duties of pedestrians as those rights and duties pertain to traffic laws and traffic safety.

SEC. 3.2. Article 4 (commencing with Section 894.6) is added to Chapter 8 of Division 1 of the Streets and Highways Code, to read:

Article 4. California Pedestrian Safety Account

894.6. The Pedestrian Safety Account is hereby established in the State Transportation Fund for expenditure by the department, upon appropriation, for the purposes of funding grants awarded pursuant to Section 894.7.

894.7. (a) The department shall make grants available to local governmental agencies based on the results of a statewide competition that requires submission of proposals for funding and rates those proposals on all of the following factors:

(1) Needs of the applicant as demonstrated by a high rate of pedestrian injuries or fatalities.

(2) Potential of the proposal for reducing pedestrian injuries and fatalities.

(3) Potential of the proposal for encouraging increased walking.

(b) Priority for grants shall be given to applicants with the highest pedestrian injury and fatality rates.

(c) Eligible projects may include, but are not limited to, traffic calming measures, intersection safety improvements, traffic signal timing, crosswalk construction or improvements, and any traffic safety or enforcement program authorized by law.

(d) A grant recipient shall engage in public education efforts to encourage pedestrian safety and awareness that may include a pedestrian safety program.

(e) The department shall award the grants as expeditiously as possible.

894.8. The department, in cooperation with county and city governments, the Department of the California Highway Patrol, and relevant stakeholders, shall adopt the necessary guidelines for implementing this article.

SEC. 4. Section 1666 of the Vehicle Code is amended to read:

1666. The department shall do all of the following:

(a) Include at least one question in each test of an applicant's knowledge and understanding of the provisions of this code, as administered pursuant to Section 12804 or 12814, to verify that the applicant has read and understands the table of blood alcohol concentration published in the Driver's Handbook made available pursuant to subdivision (b) of Section 1656. In order to minimize costs, the question or questions shall be initially included at the earliest opportunity when the test is otherwise revised or reprinted.

(b) Include with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the department, information that shows with reasonable certainty the amount of alcohol consumption necessary for a person to reach a 0.08 percent blood alcohol concentration by weight.

(c) Include at least one question in each test of an applicant's knowledge and understanding of the provisions of this code as administered pursuant to Section 12804 or 12814, to verify that the applicant has read and understands the rights of pedestrians. In order to minimize costs, the question or questions shall be initially included at the earliest opportunity when the test is otherwise revised or reprinted.

SEC. 5. Section 11113.3 is added to the Vehicle Code, to read:

11113.3. The rules and regulations adopted pursuant to Section 11113 regarding the curriculum shall include, but are not limited to, the rights and duties of a motorist as they relate to traffic laws and traffic safety.

SEC. 5.5. Section 11219.3 is added to the Vehicle Code, to read:

11219.3. The curriculum prescribed pursuant to Section 11219 shall include, but is not limited to, the rights and duties of a motorist as they pertain to pedestrians and the rights and duties of a pedestrian as they relate to traffic laws and traffic safety.

SEC. 5.5. Section 11219 of the Vehicle Code is amended to read:

11219. The director may prescribe rules and regulations for traffic violator schools regarding the conduct of courses of education including curriculum, facilities, and equipment. The curriculum shall include, but is not limited to, the rights and duties of a motorist as they pertain to pedestrians and the rights and duties of a pedestrian as they relate to traffic laws and traffic safety. The director may also prescribe rules and regulations for the conduct of instructor training courses.

SEC. 6. Section 21949 is added to the Vehicle Code, to read:

21949. (a) The Legislature hereby finds and declares that it is the policy of the State of California that safe and convenient pedestrian travel and access, whether by foot, wheelchair, walker, or stroller, be provided to the residents of the state.

(b) In accordance with the policy declared under subdivision (a), it is the intent of the Legislature that all levels of government in the state,

particularly the Department of Transportation, work to provide convenient and safe passage for pedestrians on and across all streets and highways, increase levels of walking and pedestrian travel, and reduce pedestrian fatalities and injuries.

SEC. 7. Section 21455.6 of the Vehicle Code is amended to read:

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

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

SEC. 8. Section 21950 of the Vehicle Code is amended to read:

21950. (a) The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.

(b) This section does not relieve a pedestrian from the duty of using due care for his or her safety. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. No pedestrian may unnecessarily stop or delay traffic while in a marked or unmarked crosswalk.

(c) The driver of a vehicle approaching a pedestrian within any marked or unmarked crosswalk shall exercise all due care and shall reduce the speed of the vehicle or take any other action relating to the operation of the vehicle as necessary to safeguard the safety of the pedestrian.

(d) Subdivision (b) does not relieve a driver of a vehicle from the duty of exercising due care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

SEC. 9. Section 21950.5 is added to the Vehicle Code, to read:

21950.5. (a) An existing marked crosswalk may not be removed unless notice and opportunity to be heard is provided to the public not less than 30 days prior to the scheduled date of removal. In addition to any other public notice requirements, the notice of proposed removal shall be posted at the crosswalk identified for removal.

(b) The notice required by subdivision (a) shall include, but is not limited to, notification to the public of both of the following:

(1) That the public may provide input relating to the scheduled removal.

(2) The form and method of providing the input authorized by paragraph (1).

SEC. 10. Section 21956 of the Vehicle Code is amended to read:

21956. (a) No pedestrian may walk upon any roadway outside of a business or residence district otherwise than close to his or her left-hand edge of the roadway.

(b) A pedestrian may walk close to his or her right-hand edge of the roadway if a crosswalk or other means of safely crossing the roadway is not available or if existing traffic or other conditions would compromise the safety of a pedestrian attempting to cross the road.

SEC. 11. Section 21970 is added to the Vehicle Code, to read:

21970. (a) No person may stop a vehicle unnecessarily in a manner that causes the vehicle to block a marked or unmarked crosswalk or sidewalk.

(b) Subdivision (a) does not preclude the driver of a vehicle facing a steady circular red light from turning right or turning left from a one-way street onto a one-way street pursuant to subdivision (b) of Section 21453.

SEC. 12. Section 21971 is added to the Vehicle Code, to read:

21971. Notwithstanding any other provision of law, any person who violates subdivision (a) or (b) of Section 21451, subdivision (b) of Section 21453, subdivision (a) of Section 21950, or Section 21952, and causes the bodily injury of anyone other than the driver is guilty of an infraction punishable under Section 42001.18.

SEC. 13. 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, 42001.16, or subdivision (a) of 42001.17, or Section 42001.18, 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. 14. Section 42001.17 is added to the Vehicle Code, to read:

42001.17. Notwithstanding any other provision of law, every person convicted of an infraction for a violation of Section 21951 shall be punished as follows:

(a) For the first infraction, by a fine of one hundred dollars ($100).

(b) For a second infraction for a violation of Section 21951 occurring within one year of a prior infraction of violating of that section that resulted in a conviction, by a fine not exceeding two hundred dollars ($200), as provided in paragraph (2) of subdivision (a) of Section 42001.

(c) For a third or any subsequent infraction for a violation of Section 21951 occurring within one year of two or more prior infractions of violating that section that resulted in convictions, by a fine not exceeding two hundred fifty dollars ($250), as provided in paragraph (3) of subdivision (a) of Section 42001.

SEC. 15. Section 42001.18 is added to the Vehicle Code, to read:

42001.18. Notwithstanding any other provision of law, every person convicted of an infraction for a violation of Section 21971 shall be punished as follows:

(a) For the first infraction, by a fine of two hundred twenty dollars ($220).

(b) For a second infraction for a violation of Section 21971 occurring within one year of a prior violation of that section that resulted in a conviction, by a fine of three hundred twenty dollars ($320).

(c) For a third or any subsequent infraction for a violation of Section 21971 occurring within one year of two or more prior infractions of violating that section that resulted in convictions by a fine of three hundred seventy dollars ($370).

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

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

CHAPTER 834

An act to amend Section 2106 of the Streets & Highways Code, relating to highways, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 2106 of the Streets and Highways Code is amended to read:

2106. A sum equal to the net revenue derived from one and four one-hundredths cent ($0.0104) per gallon tax under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code) shall be apportioned monthly from the Highway Users Tax Account in the Transportation Tax Fund among the counties and cities as follows:

(a) Four hundred dollars ($400) per month shall be apportioned to each city and city and county and eight hundred dollars ($800) per month shall be apportioned to each county and city and county.

(b) (1) Commencing on July 31, 2001, and on the last day of each month after that date, to and including June 30, 2006, the sum of six hundred thousand dollars ($600,000) per month shall be transferred to the Bicycle Transportation Account in the State Transportation Fund.

(2) After June 30, 2006, the sum of four hundred sixteen thousand six hundred sixty-seven dollars ($416,667) shall be transferred on the last day of each month after that date to the Bicycle Transportation Account in the State Transportation Fund.

(c) The balance shall be apportioned, as follows:

(1) A base sum shall be computed for each county by using the same proportions of fee-paid and exempt vehicles as are established for purposes of apportionment of funds under subdivision (d) of Section 2104.

(2) For each county, the percentage of the total assessed valuation of tangible property subject to local tax levies within the county which is represented by the assessed valuation of tangible property outside the incorporated cities of the county shall be applied to its base sum, and the resulting amount shall be apportioned to the county. The assessed valuation of taxable tangible property, for purposes of this computation, shall be that most recently used for countywide tax levies as reported to the Controller by the State Board of Equalization. If an incorporation or annexation is legally completed following the base sum computation, the new city's assessed valuation shall be deducted from the county's assessed valuation, the estimate of which may be provided by the State Board of Equalization.

(3) The difference between the base sum for each county and the amount apportioned to the county shall be apportioned to the cities of that county in the proportion that the population of each city bears to the total population of all the cities in the county. Populations used for determining apportionment of money under Section 2107 are to be used for purposes of this section.

CHAPTER 835

An act to amend Sections 2242 and 3502.1 of the Business and Professions Code, and to amend Section 120500 of, and to add Section 120582 to, the Health and Safety Code, relating to public health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) One out of 10 couples in California has problems with fertility.

(2) Pelvic inflammatory disease (PID) is the leading preventable cause of tubal infertility.

(3) Recurrent genital chlamydial infections due to nontreatment of sexual partners of persons with these genital infections greatly contributes to the development of PID.

(4) Current rates of chlamydial infection among Californians warrant enhanced and expanded disease prevention and control efforts.

(5) Partner-delivered treatment is a recognized component of these control efforts.

(b) It is the intent of the Legislature that physicians and surgeons be allowed to ensure adequate medical treatment and management of sexual partners of persons diagnosed with chlamydia and for programs to support the medical evaluation and treatment of partners.

SEC. 2. Section 2242 of the Business and Professions Code is amended to read:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not

exceeding the original prescription in strength or amount or for more than one refilling.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

SEC. 3. Section 3502.1 of the Business and Professions Code is amended to read:

3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons approved by the board, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d). A physician assistant also may dispense, furnish, or otherwise provide prescription antibiotic drugs in accordance with Section 120582 of the Health and Safety Code and subdivisions (c) and (d).

(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) ''Drug order'' for purposes of this section means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, all of the following shall apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician.

(2) All references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians.

(3) The signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.

(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient.

(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

SEC. 4. Section 120500 of the Health and Safety Code is amended to read:

120500. As used in the Communicable Disease Prevention and Control Act (Section 27) ''venereal diseases'' means syphilis, gonorrhea, chancroid, lymphopathia venereum, granuloma inguinale, and chlamydia.

SEC. 5. Section 120582 is added to the Health and Safety Code, to read:

120582. (a) Notwithstanding any other provision of law, a physician and surgeon who diagnoses a sexually transmitted chlamydia infection in an individual patient may prescribe, dispense, furnish, or otherwise provide prescription antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. The department may adopt regulations to implement this section.

(b) Notwithstanding any other provision of law, a nurse practitioner pursuant to Section 2836.1 of the Business and Professions Code, a certified nurse-midwife pursuant to Section 2746.51 of the Business and Professions Code, and a physician assistant pursuant to Section 3502.1 of the Business and Professions Code may dispense, furnish, or otherwise provide prescription antibiotic drugs to the sexual partner or partners of a patient with a diagnosed sexually transmitted chlamydia infection without examination of the patient's sexual partner or partners.

CHAPTER 836

An act to amend Sections 650.1, 803.1, 2066, 2341, 2342, 2344, 2350, 2352, 2354, 2355, 2420, 2467, 2468, 2546.9, 2561, 2946, 2960, 2962, 2995, 3502.1, 4040, 4119, 4305.5, 4331, 4404, 4980, 4980.03, 4980.43, 4980.44, 4980.50, 4980.80, 4980.90, 4984, 4986.10, 4986.20, 4986.70, 4992.1, 4996.6, 4996.17, and 4996.18 of, to amend and renumber Section 1684 of, to add Sections 2352.1, 2969, 4986.21, 4986.42, 4986.43, 4986.44, 4986.45, 4986.46, and 4986.47 to, and to repeal Sections 2489 and 4986.60 of, the Business and Professions Code, to amend Section 13401 of the Corporations Code, and to amend Section 12529 of the Government Code, relating to the healing arts.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 650.1 of the Business and Professions Code is amended to read:

650.1. (a) Any amount payable to any hospital, as defined in Section 4028, or any person or corporation prohibited from pharmacy permit ownership by subdivision (a) of Section 4111 under any rental, lease or service arrangement with respect to the furnishing or supply of pharmaceutical services and products, which is determined as a percentage, fraction, or portion of (1) the charges to patients or of (2) any measure of hospital or pharmacy revenue or cost, for pharmaceuticals and pharmaceutical services is prohibited.

(b) Any lease or rental arrangement existing on the effective date of this section shall be in full compliance with subdivision (a) by January 1, 1986.

(c) Any lease or rental agreement entered into prior to January 1, 1980, that extends beyond the effective date of this section shall be construed to be in compliance with this section until its expiration or the expiration of any option which is contained in any such lease or rental agreement provided that the lease or rental agreement contains provisions which limit pharmacy charges to the amounts not in excess of the prevailing charges in similar hospitals in the general geographic area.

(d) The California State Board of Pharmacy, the Medical Board of California, and the State Department of Health Services shall enforce this section and may require information from any person as is necessary for the enforcement of this section. It shall be the duty of the licensees of the respective regulatory agencies to produce the requisite evidence to show compliance with this section. Violations of this section shall be deemed to be the mutual responsibility of both lessee and lessor, and shall be grounds for disciplinary action or other sanctions against both.

SEC. 2. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including, but not limited to, all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Limitations on practice ordered by the board.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee, any malpractice judgments, any

arbitration awards, or any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for a medical disciplinary cause or reason, and any enforcement actions taken against a licensee by the board or by another state or jurisdiction, including, but not limited to, any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) The Medical Board of California and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 3. Section 1684 of the Business and Professions Code, as added by Chapter 655 of the Statutes of 1999, is amended and renumbered to read:

1684.1. (a) (1) A licensee who fails or refuses to comply with a request for the dental records of a patient, that is accompanied by that patient's written authorization for release of record to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of two hundred fifty dollars ($250) per day for each day that the documents have not been produced after the 15th day, up to a maximum of five thousand dollars ($5,000) unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the dental records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's dental records to the board within 30 days of receiving this request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to two hundred fifty dollars ($250) per day for each day that the documents have not been produced after the 30th day, up to a maximum of five thousand dollars ($5,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable cost of copying the dental records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an

accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For the purposes of this section, a ''health care facility'' means a clinic or health care facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 4. Section 2066 of the Business and Professions Code is amended to read:

2066. (a) Nothing in this chapter shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine whenever and wherever required as a part of a clinical service program under the following conditions:

(1) The clinical service is in a postgraduate training program approved by the Division of Licensing.

(2) The graduate is registered with the division for the clinical service.

(b) A graduate may engage in the practice of medicine under this section until the receipt of his or her physician and surgeon's certificate. If the graduate fails to pass the examination and receive a certificate by the completion of the graduate's third year of postgraduate training, all privileges and exemptions under this section shall automatically cease.

(c) Nothing in this section shall preclude a foreign medical graduate from engaging in the practice of medicine under any other exemption contained in this chapter.

SEC. 5. Section 2341 of the Business and Professions Code is amended to read:

2341. As used in this article:

(a) ''Division'' means the Division of Medical Quality of the Medical Board of California.

(b) ''Committee'' means a diversion evaluation committee created by this article.

(c) ''Program manager'' means the staff manager of the diversion program or his or her designee.

SEC. 6. Section 2342 of the Business and Professions Code is amended to read:

2342. One or more diversion evaluation committees is hereby created in the state to be established by the division. Each committee shall be composed of five persons appointed by the division.

Each committee shall have the following composition:

(a) Three physicians and surgeons licensed under this chapter. The division in making its appointments shall give consideration to recommendations of medical associations and local medical societies

and shall consider, among others, where appropriate, the appointment of physicians and surgeons who have recovered from impairment or who specialize in psychiatry or who have knowledge and expertise in the management of impairment.

(b) Two members not licensed as a physician and surgeon.

Each person appointed to a committee shall have experience or knowledge in the evaluation or management of persons who are impaired due to alcohol or drug abuse, or due to physical or mental illness.

It shall require the affirmative vote of four members of the division to appoint a person to a committee. Each appointment shall be at the pleasure of the division for a term not to exceed four years. In its discretion the division may stagger the terms of the initial members appointed.

SEC. 7. Section 2344 of the Business and Professions Code is amended to read:

2344. A committee created under this article operates in an advisory role to the program manager. Three members of a committee, at least one of whom shall be a public member with expertise or experience with the treatment of substance abuse and addiction, shall constitute a quorum for the transaction of business at any meeting. Any recommendation requires the majority vote of the committee.

SEC. 8. Section 2350 of the Business and Professions Code is amended to read:

2350. (a) The division shall establish criteria for the acceptance, denial, or termination of physicians and surgeons in a diversion program. Only those physicians and surgeons who have voluntarily requested diversion treatment and supervision by a committee shall participate in a program.

(b) A physician and surgeon under current investigation by the division may request entry into the diversion program by contacting the Chief or Deputy Chief of Enforcement of the Medical Board of California. The Chief or Deputy Chief of Enforcement of the Medical Board of California shall refer the physician and surgeon who requests participation in the diversion program to a committee for evaluation of eligibility, even if the physician and surgeon is currently under investigation by the division, as long as the investigation is based primarily on the self-administration of drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, and does not involve actual harm to the public or his or her patients. Prior to referring a physician and surgeon to the diversion program, the division may require any physician and surgeon who requests participation under those circumstances, or where there are other violations, to execute a statement of understanding

wherein the physician and surgeon agrees that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted should the physician and surgeon be terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the diversion program shall preclude the division from investigating or continuing to investigate any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program.

(d) Neither acceptance into nor participation in the diversion program shall preclude the division from taking disciplinary action or continuing to take disciplinary action against any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program, except for that conduct which resulted in the physician and surgeon's referral to the diversion program.

(e) Any physician and surgeon terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program. The division shall not be precluded from taking disciplinary action for violations identified in the statement of understanding described in subdivision (b) if a physician and surgeon is terminated from the diversion program for failure to comply with program requirements. The termination of a physician and surgeon who has been referred to the diversion program pursuant to subdivision (b) shall be reported by the program manager to the division.

(f) Nothing in this section shall preclude a physician and surgeon who is not the subject of a current investigation from self-referring to the diversion program on a confidential basis. Subdivision (b) shall not apply to a physician and surgeon who applies for the diversion program in accordance with this subdivision.

(g) Any physician and surgeon who successfully completes the diversion program shall not be subject to any disciplinary actions by the board for any alleged violation that resulted in referral to the diversion program. Successful completion shall be determined by the program manager but shall include, at a minimum, three years during which the physician and surgeon has remained free from the use of drugs or alcohol and adopted a lifestyle to maintain a state of sobriety.

(h) The division shall establish criteria for the selection of administrative physicians and surgeons who shall examine physicians and surgeons requesting diversion under a program. Any reports made under this article by the administrative physician and surgeon shall constitute an exception to Section 2263 and to Sections 994 and 995 of the Evidence Code.

(i) The division shall require biannual reports from each committee which shall include, but not be limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and a cost analysis of the program. The Bureau of Medical Statistics may assist the committees in the preparation of the reports.

(j) Each physician and surgeon shall sign an agreement that diversion records may be used in disciplinary or criminal proceedings if the physician and surgeon is terminated from the diversion program and one of the following conditions exists:

(1) His or her participation in the diversion program is a condition of probation.

(2) He or she has disciplinary action pending or was under investigation at the time of entering the diversion program.

(3) A diversion evaluation committee determines that he or she presents a threat to the public health or safety.

This agreement shall also authorize the diversion program to exchange information about the physician and surgeon's recovery with a hospital well-being committee or monitor and with the board's licensing program, where appropriate, and to acknowledge, with the physician and surgeon's approval, that he or she is participating in the diversion program. Nothing in this section shall be construed to allow release of alcohol or drug treatment records in violation of federal or state law.

SEC. 9. Section 2352 of the Business and Professions Code is amended to read:

2352. Each committee shall have the following duties and responsibilities:

(a) To evaluate those physicians and surgeons who request participation in the program according to the guidelines prescribed by the division and to make recommendations to the program manager.

(b) To review those treatment facilities to which physicians and surgeons in a diversion program may be referred and make recommendations to the program manager.

(c) To receive and review information concerning a physician and surgeon participating in the program.

(d) To call meetings as necessary to consider the requests of physicians and surgeons to participate in a diversion program, and to consider reports regarding physicians and surgeons participating in a program from an administrative physician and surgeon, from a physician and surgeon, or from others.

(e) To consider in the case of each physician and surgeon participating in a program whether he or she may with safety continue or resume the

practice of medicine and make recommendations to the program manager.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each physician and surgeon participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 10. Section 2352.1 is added to the Business and Professions Code, to read:

2352.1. The program shall provide information to the division as it may prescribe to assist it in evaluating the program, directing the program's operation, or proposing changes to the program. The division shall hold a meeting open to the public, at least annually, for the purpose of reviewing the required data and evaluating the program's operation.

SEC. 11. Section 2354 of the Business and Professions Code is amended to read:

2354. Each physician and surgeon who requests participation in a diversion program shall agree to cooperate with the treatment and monitoring program designated by the program manager. Any failure to complete successfully a treatment and monitoring program may result in the filing of an accusation for discipline which may include any acts giving rise to the original diversion.

SEC. 12. Section 2355 of the Business and Professions Code is amended to read:

2355. (a) After the program manager has determined that a physician and surgeon has been rehabilitated and the diversion program is completed, the program manager shall purge and destroy all treatment records pertaining to the physician's and surgeon's participation in a diversion program, except as otherwise provided in this section. Notwithstanding Section 156.1, the board shall retain any other information and records that it specifies by regulation.

(b) Except as otherwise provided by Section 2350, all board and committee records and records of proceedings pertaining to the treatment of a physician and surgeon in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 13. Section 2420 of the Business and Professions Code is amended to read:

2420. The provisions of this article apply to, determine the expiration of, and govern the renewal of, each of the following certificates, licenses, registrations, and permits issued by or under the Medical Board of California: physician's and surgeon's certificates, certificates to practice podiatric medicine, physical therapy licenses and approvals, registrations of research psychoanalysts, registrations of dispensing opticians, registrations of nonresident contact lens sellers, registrations of spectacle lens dispensers, registrations of contact lens

dispensers, certificates of drugless practitioners, certificates to practice midwifery, and fictitious-name permits.

SEC. 14. Section 2467 of the Business and Professions Code is amended to read:

2467. (a) The board may convene from time to time as it deems necessary.

(b) Four members of the board constitute a quorum for the transaction of business at any meeting.

(c) It shall require the affirmative vote of a majority of those members present at a meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure.

(d) The board shall annually elect one of its members to act as president and a member to act as vice president who shall hold their respective positions at the pleasure of the board. The president may call meetings of the board and any duly appointed committee at a specified time and place.

SEC. 15. Section 2468 of the Business and Professions Code is amended to read:

2468. Notice of each meeting of the board shall be given 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. 16. Section 2489 of the Business and Professions Code is repealed.

SEC. 17. Section 2546.9 of the Business and Professions Code is amended to read:

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100).

(b) The renewal fee shall be one hundred dollars ($100).

(c) The delinquency fee shall be twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).

(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the Medical Board of California for the purposes of this chapter.

SEC. 18. Section 2561 of the Business and Professions Code is amended to read:

2561. An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the division. The division shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or

any successor agency to that committee. In the event the division should ever find after hearing that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the division may thereafter from time to time prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years then the division may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination administered by the division shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The division is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at least twice each year on dates publicly announced at least 90 days before the examination dates.

The division may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

The division shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser.

A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

SEC. 19. Section 2946 of the Business and Professions Code is amended to read:

2946. The board shall grant a license to any person who passes the California Jurisprudence and Professional Ethics Examination and, at the time of application, has been licensed for at least five years by a psychology licensing authority in another state or Canadian province if the requirements for obtaining a certificate or license in that state or province were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state or province and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive those parts of the examination, including either the whole of the written or the oral examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by those parts of the examination. The board at its discretion may waive the examination for diplomates of the American Board of Professional Psychology.

SEC. 20. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications,

functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

SEC. 20.5. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to

practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

(s) Violating Section 2952.

SEC. 21. Section 2962 of the Business and Professions Code is amended to read:

2962. (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination of probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

SEC. 22. Section 2969 is added to the Business and Professions Code, to read:

2969. (a) (1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board

a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is

determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) The imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(f) For purposes of this section, ''health care facility'' means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 23. Section 2995 of the Business and Professions Code is amended to read:

2995. A psychological corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage and and family therapists, licensed clinical social workers, chiropractors, acupuncturists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

SEC. 23.5. Section 3502.1 of the Business and Professions Code is amended to read:

3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) ''Drug order'' for purposes of this section means an order for medication which is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.

(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the

supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient.

(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

SEC. 23.7. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) ''Prescription'' means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the physician assistant or nurse practitioner who issues a drug order pursuant to Section 3502.1 or 2836.1.

(2) Issued by a physician, dentist, optometrist, podiatrist, or veterinarian, or, if a drug order is issued pursuant to Section 3502.1 or 2836.1, by a physician assistant or nurse practitioner licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) ''Electronic transmission prescription'' includes both image and data prescriptions. ''Electronic image transmission prescription'' means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. ''Electronic data transmission prescription'' means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 24. Section 4119 of the Business and Professions Code is amended to read:

4119. (a) Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility

regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations and the requirements set forth in Section 1261.5 of the Health and Safety Code. These emergency supplies shall be approved by the facility's patient care policy committee or pharmaceutical service committee and shall be readily available to each nursing station. Section 1261.5 of the Health and Safety Code limits the number of oral dosage form or suppository form drugs in these emergency supplies to 24.

(b) Notwithstanding any other provision of law, a pharmacy may furnish a dangerous drug or a dangerous device to an approved service provider within an emergency medical services system for storage in a secured emergency pharmaceutical supplies container, in accordance with the policies and procedures of the local emergency medical services agency, if all of the following are met:

(1) The dangerous drug or dangerous device is furnished exclusively for use in conjunction with services provided in an ambulance, or other approved emergency medical services service provider, that provides prehospital emergency medical services.

(2) The requested dangerous drug or dangerous device is within the licensed or certified emergency medical technician's scope of practice as established by the Emergency Medical Services Authority and set forth in Title 22 of the California Code of Regulations.

(3) The approved service provider within an emergency medical services system provides a written request that specifies the name and quantity of dangerous drugs or dangerous devices.

(4) The approved emergency medical services provider administers dangerous drugs and dangerous devices in accordance with the policies and procedures of the local emergency medical services agency.

(5) The approved emergency medical services provider documents, stores, and restocks dangerous drugs and dangerous devices in accordance with the policies and procedures of the local emergency medical services agency.

Records of each request by, and dangerous drugs or dangerous devices furnished to, an approved service provider within an emergency medical services system, shall be maintained by both the approved service provider and the dispensing pharmacy for a period of at least three years.

The furnishing of controlled substances to an approved emergency medical services provider shall be in accordance with the California Uniform Controlled Substances Act.

SEC. 25. Section 4305.5 of the Business and Professions Code is amended to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of

employment of any pharmacist or exemptee who takes charge of, or acts as manager of, the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of, the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a medical device retailer, veterinary food-animal drug retailer, or wholesaler.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

SEC. 26. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a medical device retailer, wholesaler, or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a medical device retailer and who fails to place in charge of that medical device retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 26.5. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a home medical equipment services provider, wholesaler, or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a home medical equipment services provider and who fails to place in charge of that home medical equipment services provider a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 27. Section 4404 of the Business and Professions Code is amended to read:

4404. If any license issued under this chapter is lost or destroyed, or if any person desires a reissuance of his or her license, the board may reissue it, subject to Section 4403, upon application therefor, and the submission of satisfactory proof, if required by the board, that the license has been lost or destroyed, or if the license has not been lost or destroyed, upon the surrender of the old license.

SEC. 28. Section 4980 of the Business and Professions Code is amended to read:

4980. (a) Many California families and many individual Californians are experiencing difficulty and distress, and are in need of wise, competent, caring, compassionate, and effective counseling in order to enable them to improve and maintain healthy family relationships.

Healthy individuals and healthy families and healthy relationships are inherently beneficial and crucial to a healthy society, and are our most precious and valuable natural resource. Marriage, family, and child

counselors provide a crucial support for the well-being of the people and the State of California.

(b) No person may engage in the practice of marriage, family, and child counseling as defined by Section 4980.02, unless he or she holds a valid license as a marriage, family, and child counselor, or unless he or she is specifically exempted from that requirement, nor may any person advertise himself or herself as performing the services of a marriage, family, child, domestic, or marital consultant, or in any way use these or any similar titles, including the letters ''M.F.T.'' or ''M.F.C.C.,'' or other name, word initial, or symbol in connection with or following his or her name to imply that he or she performs these services without a license as provided by this chapter. Persons licensed under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2, or under Chapter 6.6 (commencing with Section 2900) may engage in such practice or advertise that they practice marriage, family, and child counseling but may not advertise that they hold the marriage, family, and child counselor's license.

SEC. 29. Section 4980.03 of the Business and Professions Code is amended to read:

4980.03. (a) ''Board,'' as used in this chapter, means the Board of Behavioral Sciences.

(b) ''Intern,'' as used in this chapter, means an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the board.

(c) ''Trainee,'' as used in this chapter, means an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.40, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(d) ''Applicant,'' as used in this chapter, means an unlicensed person who has completed a masters or doctoral degree program, as specified in Section 4980.40, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure as specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

(e) ''Advertise,'' as used in this chapter, includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church

bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

SEC. 30. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. For those applicants who enroll in a qualifying degree program on or after January 1, 1995, not more than 750 hours of counseling and direct supervisor contact may be obtained prior to the granting of the qualifying master's or doctor's degree. However, this limitation shall not be interpreted to include professional enrichment activities. Except for personal psychotherapy hours gained after enrollment and commencement of classes in a qualifying degree program, no hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) All applicants and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage, family, and child counseling. Experience shall be gained by interns and trainees either as an employee or as a volunteer in any allowable work setting specified in this chapter. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed. A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. A person gaining postdegree experience shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons. The contact may be counted toward the experience requirement for licensure, up to the maximum permitted by

subdivision (d). All experience gained by a trainee shall be monitored by the supervisor as specified in regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) The experience required by Section 4980.40 shall include supervised marriage, family, and child counseling, and up to one-third of the hours may include direct supervisor contact and other professional enrichment activities.

(2) ''Professional enrichment activities,'' for the purposes of this section, may include group, marital or conjoint, family, or individual psychotherapy received by an applicant. This psychotherapy may include up to 100 hours taken subsequent to enrolling and commencing classes in a qualifying degree program, or as an intern, and each of those hours shall be triple counted toward the professional experience requirement. This psychotherapy shall be performed by a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry.

(e) The experience required by Section 4980.40 may be gained as a trainee in the following settings: a governmental entity, a school, college or university, a nonprofit and charitable corporation, a licensed health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code, a social rehabilitation facility or a community treatment facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, a pediatric day health and respite care facility, as defined in Section 1760.2 of the Health and Safety Code, or a licensed alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code, if the experience is gained by the trainee solely as part of the position for which he or she is employed.

(f) The experience required by Section 4980.40 may be gained as an intern as specified in subdivision (e), or when employed in a private practice owned by a licensed marriage, family, and child counselor, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions. Employment in a private practice setting shall not commence until the applicant has been registered as an intern. When an intern is employed in a private practice setting by any licensee enumerated in this section, or by a professional corporation of any of those licensees, the intern shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40 who shall be employed by and practice at the same site as the intern's employer. An intern employed in a private practice setting shall not pay his or her

employer for supervision. While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(g) All interns shall register with the board in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (h), all postdegree hours shall be gained as a registered intern.

(h) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(i) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(j) Trainees and interns shall only perform services at the place where their employer regularly conducts business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(k) An intern or trainee who provides volunteered services or other services, and who receives no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by that intern or trainee for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(*l*) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 31. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. (a) An unlicensed marriage, family, and child counselor intern employed under this chapter shall:

(1) Have earned at least a master's degree as specified in Section 4980.40.

(2) Be registered with the board prior to the intern performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(3) File for renewal of registration annually for a maximum of five years after initial registration with the board.

(4) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40, whichever is applicable. Continued employment as an unlicensed marriage, family, and child counselor intern shall cease after six years unless the requirements of subdivision (b) are met.

(b) When no further renewals are possible, either because the applicant has exhausted the number of renewals available or because of the repeal of Section 4980.44, as amended by Chapter 1114 of the Statutes of 1991, an applicant may apply for and obtain new intern registration status if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in all allowable work settings except in private practice, and shall fulfill all of the required hours of experience for licensure within that intern registration period. Hours of experience fulfilled under a prior intern registration shall not be used to satisfy licensure requirements.

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

SEC. 32. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. Every applicant who meets the educational and experience requirements and applies for a license as a marriage, family, and child counselor shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts

or engaged in any conduct which would constitute grounds to deny licensure.

The board shall not deny any applicant, whose application for licensure is complete, admission to the written examination, nor shall the board postpone or delay any applicant's written examination or delay informing the candidate of the results of any written examination, solely upon the receipt by the board of a complaint alleging acts or conduct which would constitute grounds to deny licensure.

When an applicant for examination who has passed the written examination is the subject of a complaint or is under board investigation for acts or conduct which, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the oral examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

Notwithstanding Section 135, the board may deny any applicant who has previously failed either the written or oral examination permission to retake either examination pending completion of the investigation of any complaints against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485 of the Business and Professions Code.

Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage, family, and child counselor in the form that the board may deem appropriate.

SEC. 33. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. The board may issue a license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the written and oral licensing examinations administered in this state and pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality, as specified in Section 25, and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(f) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(g) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(h) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharamacology, the board may accept training or coursework acquired out of state.

SEC. 34. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter provided that the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) Education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, provided that the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25, and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(6) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharamacology, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been granted a degree in a single integrated program primarily designed to train marriage, family, and child counselors and if the applicant's education meets the requirements of Sections 4980.37 and 4980.40 provided, however, that the degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. Where the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.

SEC. 35. Section 4984 of the Business and Professions Code is amended to read:

4984. (a) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license, the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4980.54.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

SEC. 36. Section 4986.10 of the Business and Professions Code is amended to read:

4986.10. (a) A licensed educational psychologist shall be authorized to perform any of the following professional functions pertaining to academic learning processes or the educational system or both:

(1) Educational evaluation, diagnosis, and test interpretation limited to assessment of academic ability, learning patterns, achievement, motivation, and personality factors directly related to academic learning problems.

(2) Counseling services for children or adults for amelioration of academic learning problems.

(3) Educational consultation, research, and direct educational services.

(b) It is unlawful for any person to engage in the practice of educational psychology unless he or she holds a valid, unexpired, and unrevoked license under this article.

SEC. 37. Section 4986.20 of the Business and Professions Code is amended to read:

4986.20. A person who desires a license under this article shall meet all of the following qualifications:

(a) He or she shall possess at least a master's degree in psychology, educational psychology, school psychology, or counseling and guidance, or a degree deemed equivalent by the board under regulations duly adopted under this article. Such degree or training shall be obtained from educational institutions approved by the board according to the regulations duly adopted under this article.

(b) He or she shall be at least 18 years of age.

(c) He or she shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in the United States that involves sexual abuse of children or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory.

(d) He or she shall have successfully completed 60 semester hours of postgraduate work devoted to pupil personnel services or have experience deemed equivalent by the board in regulations duly adopted under this chapter.

(e) He or she shall furnish proof of three years of full-time experience as a credentialed school psychologist in the public schools or experience which the board deems equivalent. If the applicant provides proof of having completed one year's internship working full time as a school psychologist intern in the public schools in an accredited internship program, one year's experience shall be credited toward this requirement.

(f) He or she shall be examined by the board with respect to the professional functions authorized by this article.

(g) He or she shall have at least one year of supervised professional experience in an accredited school psychology program, or under the direction of a licensed psychologist, or such suitable alternative experience as determined by the board in regulations duly adopted under this chapter.

SEC. 38. Section 4986.21 is added to the Business and Professions Code, to read:

4986.21. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination. Every applicant who is issued a license as an educational psychologist shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

SEC. 39. Section 4986.42 is added to the Business and Professions Code, to read:

4986.42. (a) Licenses issued under this chapter shall expire no later than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Notify the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

SEC. 40. Section 4986.43 is added to the Business and Professions Code, to read:

4986.43. A license that has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is renewed after its expiration, the licensee shall, prior to renewal, pay the delinquency fee prescribed by this chapter.

SEC. 41. Section 4986.44 is added to the Business and Professions Code, to read:

4986.44. A suspended license is subject to expiration and shall be renewed as provided in this article. A person with a suspended license shall not, until the reinstatement of his or her license, engage in any activity to which the license relates, or any other activity or conduct in violation of the order or judgment by which the license was suspended.

SEC. 42. Section 4986.45 is added to the Business and Professions Code, to read:

4986.45. A revoked license is subject to expiration as provided in this article and shall not be renewed. Upon reinstatement of a license after its expiration, a licensee shall, prior to reinstatement, 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 and any delinquency fee which may have accrued.

SEC. 43. Section 4986.46 is added to the Business and Professions Code, to read:

4986.46. A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. A licensee may apply for and obtain a new license if he or she satisfies the following:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(c) He or she takes and passes the current licensing examination.

SEC. 44. Section 4986.47 is added to the Business and Professions Code, to read:

4986.47. A licensee or registrant shall give written notice to the board of a name change within 30 days after each change, providing both the old and 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.

SEC. 45. Section 4986.60 of the Business and Professions Code is repealed.

SEC. 46. Section 4986.70 of the Business and Professions Code is amended to read:

4986.70. The board may refuse to issue a license, or may suspend or revoke the license of any licensee if he or she has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist, the record of conviction being conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) Using any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any hypnotic drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public and to an extent that such action impairs his or her ability to perform his or her work as a licensed educational psychologist with safety to the public.

(d) Improper advertising.

(e) Violating or conspiring to violate the terms of this article.

(f) Committing a dishonest or fraudulent act as a licensed educational psychologist resulting in substantial injury to another.

(g) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(h) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage, family and child counselor shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(i) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(j) Gross negligence or incompetence in the performance of licensed educational psychology.

SEC. 47. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

Every applicant who is issued a clinical social worker license shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

SEC. 48. Section 4996.6 of the Business and Professions Code is amended to read:

4996.6. (a) The renewal fee for licenses that expire on or after January 1, 1996, shall be a maximum of one hundred fifty-five dollars ($155) and shall be collected on a biennial basis by the board in accordance with Section 152.6. The fees shall be deposited in the State Treasury to the credit of the Behavioral Sciences Fund.

(b) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(c) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two-year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4996.22.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(d) If the license is renewed after its expiration, the licensee shall, as a condition precedent to renewal, also pay a delinquency fee of seventy-five dollars ($75).

(e) Any person who permits his or her license to become delinquent may have it restored at any time within five years after its expiration upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of all delinquency fees.

(f) A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, however the licensee may apply for and obtain a new license if:

(1) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(2) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(3) He or she takes and passes the current licensing examinations.

(g) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(h) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

SEC. 49. Section 4996.17 of the Business and Professions Code is amended to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter. The board may issue a license to any person who, at the time of application, has held a valid license, issued by a board of clinical social work examiners or

corresponding authority of any state, for two years if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the written and oral licensing examinations administered in this state and pays the required fees. Issuance of the license is conditioned upon the person's completion of the following coursework and training:

(1) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(4) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(5) With respect to paragraphs (2), (3), and (4), the board may accept training or coursework acquired out of state.

(b) A person who qualifies for licensure based on experience gained outside California may apply for and receive an associate registration to practice clinical social work.

SEC. 50. Section 4996.18 of the Business and Professions Code is amended to read:

4996.18. (a) Any person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board and shall be accompanied by a fee of ninety dollars ($90). An applicant for registration shall (1) possess a master's degree from an accredited school or department of social work, and (2) not have committed any crimes or acts constituting grounds for denial of licensure under Section 480. On and after January 1, 1993, an applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(b) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. A registration may be renewed annually after initial registration by filing an application for renewal and paying a renewal fee of seventy-five dollars ($75) on or before the date on which the registration expires. Each person who registers or has registered as an associate clinical social worker, may retain that status for a total of six years.

(c) Notwithstanding the limitations on the length of an associate registration in subdivision (b), an associate may apply for, and the board shall grant, one-year extensions beyond the six-year period when no grounds exist for denial, suspension, or revocation of the registration pursuant to Section 480. An associate shall be eligible to receive a maximum of three one-year extensions. An associate who practices pursuant to an extension shall not practice independently and shall comply with all requirements of this chapter governing experience, including supervision, even if the associate has completed the hours of experience required for licensure. Each extension shall commence on the date when the last associate renewal or extension expires. An application for extension shall be made on a form prescribed by the board and shall be accompanied by a renewal fee of fifty dollars ($50). An associate who is granted this extension may work in all work settings authorized pursuant to this chapter.

(d) Experience gained before January 1, 1990, shall be credited toward the licensure requirements so long as the applicant applies for registration not later than December 31, 1989, and that registration is thereafter granted by the board.

(e) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee of the licensed person by whom the registrant is being supervised.

(f) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

(g) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(h) An applicant who possesses a master's degree from an approved school or department of social work shall be able to apply experience the applicant obtained during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements,

if the experience meets the requirements of Section 4996.20 or 4996.21. This subdivision shall apply retroactively to persons who possess a master's degree from an approved school or department of social work and who obtained experience during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(i) The board shall report to the Legislature on or before October 1, 1999, concerning its efforts to identify educational issues that relate to licensure.

SEC. 51. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

(a) ''Professional services'' means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) ''Professional corporation'' means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) ''Foreign professional corporation'' means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) ''Licensed person'' means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(e) ''Disqualified person'' means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

SEC. 52. Section 12529 of the Government Code is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

SEC. 53. Section 20.5 of this bill incorporates amendments to Section 2960 of the Business and Professions Code proposed by both this bill and AB 1144. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 2960 of the Business and Professions Code, and (3) this bill is enacted after AB 1144, in which case Section 20 of this bill shall not become operative.

SEC. 54. Section 26.5 of this bill incorporates amendments to Section 4331 of the Business and Professions Code proposed by both

this bill and AB 1496. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 4331 of the Business and Professions Code, and (3) this bill is enacted after AB 1496, in which case Section 26 of this bill shall not become operative.

SEC. 55. 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 837

An act to amend Sections 19051, 19055, and 19059.5 of, to amend, repeal, and add Sections 4053, 4059, 4081, 4101, 4105, 4201, 4305.5, 4312, 4331, and 4400 of, to add and repeal Section 4139 of, and to repeal Sections 4034 and 4344 of, and to repeal Article 8 (commencing with Section 4130 of Chapter 9 of Division 2) of, the Business and Professions Code and to add Sections 109948, 109948.1, 110010.1, 110010.2, 111656, 111656.1, 111656.2, 111656.3, 111656.4, 111656.5, 111656.6, 111656.7, 111656.8, 111656.9, 111656.10, 111656.11, 111656.12, and 111656.13 to, the Health and Safety Code, relating to home medical device retail facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 4034 of the Business and Professions Code is repealed.

SEC. 2. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a manufacturer, wholesaler, or medical device retailer if the board shall find that sufficient, qualified supervision is employed by the manufacturer, wholesaler, or medical device retailer to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) Section 4051 shall not prohibit a veterinary food-animal drug retailer from selling or dispensing veterinary food-animal drugs for food-producing animals if the board finds that sufficient qualified supervision is employed by the veterinary food-animal drug retailer to adequately safeguard and protect the public health. Each person applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(1) The veterinary food-animal drug retailer shall be in the charge of an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(2) Each premises maintained by a veterinary food-animal drug retailer shall have a license issued by the board and shall have an exempt person on the premises if veterinary food-animal drugs are furnished, sold, or dispensed.

(3) Only the exempt person shall prepare and affix the label to all veterinary food-animal drugs.

(4) The exempt person shall complete a training program to be approved by the board and qualify through examination on areas covering the essential knowledge necessary to properly read, fill, label, and dispense veterinary food-animal prescriptions.

(c) An exemptee certificate issued pursuant to this section is valid only at the location for which it is issued. The licensee and the exemptee shall each notify the board in writing within 30 days of the date on which the exemptee is no longer employed by the licensee at the location for which the exemptee certificate was issued. The licensee shall not operate without a pharmacist or an exemptee approved for that location by the board.

(d) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 4053 is added to the Business and Professions Code, to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a manufacturer or wholesaler if the board shall find that sufficient, qualified supervision is employed by the manufacturer or wholesaler to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) Section 4051 shall not prohibit a veterinary food-animal drug retailer from selling or dispensing veterinary food-animal drugs for food-producing animals if the board finds that sufficient qualified supervision is employed by the veterinary food-animal drug retailer to adequately safeguard and protect the public health. Each person

applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(1) The veterinary food-animal drug retailer shall be in the charge of an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(2) Each premises maintained by a veterinary food-animal drug retailer shall have a license issued by the board and shall have an exempt person on the premises if veterinary food-animal drugs are furnished, sold, or dispensed.

(3) Only the exempt person shall prepare and affix the label to all veterinary food-animal drugs.

(4) The exempt person shall complete a training program to be approved by the board and qualify through examination on areas covering the essential knowledge necessary to properly read, fill, label, and dispense veterinary food-animal prescriptions.

(c) An exemptee certificate issued pursuant to this section is valid only at the location for which it is issued. The licensee and the exemptee shall each notify the board in writing within 30 days of the date on which the exemptee is no longer employed by the licensee at the location for which the exemptee certificate was issued. The licensee shall not operate without a pharmacist or an exemptee approved for that location by the board.

(d) This section shall become operative on July 1, 2001.

SEC. 4. Section 4059 of the Business and Professions Code is amended to read:

4059. (a) No person shall furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(b) This section shall not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device and its quantity. This section shall not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, and a description of the device and the quantity supplied.

(c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute dangerous drugs and dangerous devices directly to

dialysis patients pursuant to regulations adopted by the board. The board shall adopt any regulations as are necessary to ensure the safe distribution of these drugs and devices to dialysis patients without interruption thereof. A person who violates a regulation adopted pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties that may be imposed pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of the drugs or devices distributed to individual patients.

(d) Home dialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a dialysis center licensed by the State Department of Health Services. The physician prescribing the dialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed the program.

(e) A pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist or may furnish topical pharmaceutical agents authorized for use pursuant to paragraph (5) of subdivision (a) of Section 3041 to an optometrist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance.

(f) A medical device retailer shall dispense, furnish, transfer, or sell a dangerous device only to another medical device retailer, a pharmacy, a physician, a licensed health care facility, a licensed physical therapist, or a patient or his or her personal representative.

(g) A pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy Examining Committee of California to perform tissue penetration in accordance with Section 2620.5.

(h) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, or veterinarian.

(i) A veterinary food-animal drug retailer shall dispense, furnish, transfer, or sell veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a prescription from the veterinarian for food-producing animals.

(j) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 5. Section 4059 is added to the Business and Professions Code, to read:

4059. (a) No person shall furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(b) This section shall not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device and its quantity. This section shall not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, and a description of the device and the quantity supplied.

(c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute dangerous drugs and dangerous devices directly to dialysis patients pursuant to regulations adopted by the board. The board shall adopt any regulations as are necessary to ensure the safe distribution of these drugs and devices to dialysis patients without interruption thereof. A person who violates a regulation adopted pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties that may be imposed pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of the drugs or devices distributed to individual patients.

(d) Home dialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a dialysis center licensed by the State Department of Health Services. The physician prescribing the dialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed the program.

(e) A pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist or may furnish topical pharmaceutical agents authorized for use pursuant to paragraph (5) of subdivision (a) of Section 3041 to an optometrist. A record containing

the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance.

(f) A pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy Examining Committee of California to perform tissue penetration in accordance with Section 2620.5.

(g) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, or veterinarian.

(h) A veterinary food-animal drug retailer shall dispense, furnish, transfer, or sell veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a prescription from the veterinarian for food-producing animals.

(i) This section shall become operative on July 1, 2001.

SEC. 6. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, veterinary food-animal drug retailer, or medical device retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 7. Section 4081 is added to the Business and Professions Code, to read:

4081. (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on July 1, 2001.

SEC. 8. Section 4101 of the Business and Professions Code is amended to read:

4101. (a) Any pharmacist who takes charge of, or acts as pharmacist-in-charge of a pharmacy or other entity licensed by the board, who terminates his or her employment at the pharmacy or other entity, shall notify the board within 30 days of the termination of employment.

(b) Any exemptee who takes charge of, or acts as manager of, a wholesaler, medical device retailer, or veterinary food-drug animal retailer, who terminates his or her employment at that entity shall notify the board within 30 days of the termination of employment.

(c) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 9. Section 4101 is added to the Business and Professions Code, to read:

4101. (a) Any pharmacist who takes charge of, or acts as pharmacist-in-charge of a pharmacy or other entity licensed by the board, who terminates his or her employment at the pharmacy or other

entity, shall notify the board within 30 days of the termination of employment.

(b) Any exemptee who takes charge of, or acts as manager of, a wholesaler or veterinary food-drug animal retailer, who terminates his or her employment at that entity shall notify the board within 30 days of the termination of employment.

(c) This section shall become operative on July 1, 2001.

SEC. 10. Section 4105 of the Business and Professions Code is amended to read:

4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer, medical device retailer, or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

(f) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 11. Section 4105 is added to the Business and Professions Code, to read:

4105. (a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e) (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

(f) This section shall become operative on July 1, 2001.

SEC. 12. Article 8 (commencing with Section 4130) of Chapter 9 of Division 2 of the Business and Professions Code is repealed.

SEC. 13. Section 4139 is added to the Business and Professions Code, to read:

4139. (a) Licenses to conduct a medical device retailer issued or renewed by the California State Board of Pharmacy prior to July 1, 2001, shall remain valid until one year after the date of the issuance or renewal of the license. On or after July 1, 2001, the California State Board of Pharmacy shall not issue or renew a medical device retailer license. Thereafter, entities seeking licensure as a home medical device retail facility shall apply to the State Department of Health Services.

(b) This section shall remain in effect only until July 1, 2002, and as of January 1, 2003, is repealed, unless a statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 14. Section 4201 of the Business and Professions Code is amended to read:

4201. (a) Each application to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall be made on a form furnished by the board, and shall state the name, address, usual occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a natural person, the application

shall state the information as to each person beneficially interested therein.

(b) As used in this section, and subject to subdivision (c), the term ''person beneficially interested'' means and includes:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that no natural person shall be deemed to be beneficially interested in a nonprofit corporation.

(3) If the applicant is a limited liability company, each officer, manager, or member.

(c) In any case where the applicant is a partnership or other unincorporated association, is a limited liability company, or is a corporation, and where the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the information required by subdivision (a) as to each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the executive officer, the applicant shall furnish the board with the information required by subdivision (a) as to partners, members, or stockholders not named in the application, or shall refer the board to an appropriate source of that information.

(d) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this chapter. If the applicant cannot make this statement, the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

(e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, the executive officer of the board shall issue a license to conduct a pharmacy, wholesaler, medical device retailer, or veterinary food-animal drug retailer, if all of the provisions of this chapter have been complied with.

(f) Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable.

(g) Notwithstanding any other provision of law, the wholesale license shall authorize the holder to wholesale dangerous drugs and dangerous devices. The license shall be renewed annually and shall not be transferable.

(h) Notwithstanding any other provision of law, the medical device retailer license shall authorize the holder thereof to operate as a medical device retailer and to sell and dispense dangerous devices.

(i) Notwithstanding any other provision of law, the veterinary food-animal drug retailer license shall authorize the holder thereof to conduct a veterinary food-animal drug retailer and to sell and dispense veterinary food-animal drugs as defined in Section 4042.

(j) For licenses referred to in subdivisions (f), (g), (h), and (i), any change in the proposed beneficial ownership interest shall be reported to the board within 30 days thereafter upon a form to be furnished by the board.

(k) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 15. Section 4201 is added to the Business and Professions Code, to read:

4201. (a) Each application to conduct a pharmacy, wholesaler, or veterinary food-animal drug retailer, shall be made on a form furnished by the board, and shall state the name, address, usual occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a natural person, the application shall state the information as to each person beneficially interested therein.

(b) As used in this section, and subject to subdivision (c), the term ''person beneficially interested'' means and includes:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that no natural person shall be deemed to be beneficially interested in a nonprofit corporation.

(3) If the applicant is a limited liability company, each officer, manager, or member.

(c) In any case where the applicant is a partnership or other unincorporated association, is a limited liability company, or is a corporation, and where the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the information required by subdivision (a) as to each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the executive officer, the applicant shall furnish the board with the information required by subdivision (a) as to partners, members, or stockholders not named in the application, or shall refer the board to an appropriate source of that information.

(d) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this chapter. If the applicant cannot make this statement, the application shall contain a statement of the violation, if

any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

(e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, wholesaler, or veterinary food-animal drug retailer, the executive officer of the board shall issue a license to conduct a pharmacy, wholesaler, or veterinary food-animal drug retailer, if all of the provisions of this chapter have been complied with.

(f) Notwithstanding any other provision of law, the pharmacy license shall authorize the holder to conduct a pharmacy. The license shall be renewed annually and shall not be transferable.

(g) Notwithstanding any other provision of law, the wholesale license shall authorize the holder to wholesale dangerous drugs and dangerous devices. The license shall be renewed annually and shall not be transferable.

(h) Notwithstanding any other provision of law, the veterinary food-animal drug retailer license shall authorize the holder thereof to conduct a veterinary food-animal drug retailer and to sell and dispense veterinary food-animal drugs as defined in Section 4042.

(i) For licenses referred to in subdivisions (f), (g), and (h), any change in the proposed beneficial ownership interest shall be reported to the board within 30 days thereafter upon a form to be furnished by the board.

(j) This section shall become operative on July 1, 2001.

SEC. 16. Section 4305.5 of the Business and Professions Code is amended to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler, medical device retailer, or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of

employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(d) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 17. Section 4305.5 is added to the Business and Professions Code, to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(d) This section shall become operative on July 1, 2001.

SEC. 18. Section 4312 of the Business and Professions Code is amended to read:

4312. (a) The board may void the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer if the licensed premises remains closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may void a license after a shorter period of closure. To void a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may void the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is voided pursuant to subdivision (a) or revoked pursuant to Article 9 (commencing with Section 4300), or a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer, notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer is located, authorizing the board to enter the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) Where a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to

Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, ''closed'' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

(g) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 19. Section 4312 is added to the Business and Professions Code, to read:

4312. (a) The board may void the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer if the licensed premises remains closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may void a license after a shorter period of closure. To void a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may void the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer is voided pursuant to subdivision (a) or revoked pursuant to Article 9 (commencing with Section 4300), or a wholesaler, pharmacy, medical device retailer, or veterinary food-animal drug retailer, notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a wholesaler, pharmacy, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, or veterinary food-animal drug retailer is located, authorizing

the board to enter the wholesaler, pharmacy, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) Where a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, ''closed'' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

(g) This section shall become operative on July 1, 2001.

SEC. 20. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a medical device retailer, wholesaler, or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a medical device retailer and who fails to place in charge of that medical device retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(e) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 21. Section 4331 is added to the Business and Professions Code, to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a wholesaler or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) This section shall become operative on July 1, 2001.

SEC. 22. Section 4344 of the Business and Professions Code is repealed.

SEC. 23. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) (1) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(2) The fee for a medical device retailer license shall not exceed the fee for a nongovernmental pharmacy license.

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for processing remodeling plans and inspecting a remodeled pharmacy shall be one hundred thirty dollars ($130) and may be increased to one hundred seventy-five dollars ($175).

(d) The fee for the pharmacist examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(e) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(f) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(g) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(h) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(i) The fee for examination and investigation for an exemptee license under Sections 4053 and 4054 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(j) The fee for an exemptee license and annual renewal under Sections 4053 and 4054 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(k) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(*l*) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(m) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(n) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(o) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(p) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(q) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(r) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(s) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(t) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(u) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(v) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(w) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

(x) This section shall remain in effect only until July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 24. Section 4400 is added to the Business and Professions Code, to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for processing remodeling plans and inspecting a remodeled pharmacy shall be one hundred thirty dollars ($130) and may be increased to one hundred seventy-five dollars ($175).

(d) The fee for the pharmacist examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(e) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(f) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(g) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(h) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(i) The fee for examination and investigation for an exemptee license under Sections 4053 and 4054 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(j) The fee for an exemptee license and annual renewal under Sections 4053 and 4054 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall

be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(k) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(*l*) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(m) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(n) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(o) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(p) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(q) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(r) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(s) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(t) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(u) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(v) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(w) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

(x) This section shall become operative on July 1, 2001.

SEC. 25. Section 19051 of the Business and Professions Code is amended to read:

19051. Every upholstered-furniture retailer, unless he or she holds an importer's license, a furniture and bedding manufacturer's license, a wholesale furniture and bedding dealer's license, a custom upholsterer's license, or a retail furniture and bedding dealer's license shall hold a retail furniture dealer's license.

(a) This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer. This section does not apply to a person who sells ''used'' and ''antique'' furniture as defined in Sections 19008.1 and 19008.2.

(b) This section does not apply to a person who is licensed as a home medical device retail facility by the State Department of Health Services, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer.

SEC. 26. Section 19055 of the Business and Professions Code is amended to read:

19055. Every bedding retailer, unless he or she holds an importer's license, an upholstered-furniture and bedding manufacturer's license, a wholesale upholstered-furniture and bedding dealer's license, or a retail furniture and bedding dealer's license, shall hold a retail bedding dealer's license.

(a) This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable bedding items on behalf of a client, provided that the bedding is purchased from an appropriately licensed importer, wholesaler, or retailer.

(b) This section does not apply to a person who is licensed as a home medical device retail facility by the State Department of Health Services, provided that the bedding is purchased from an appropriately licensed importer, wholesaler, or retailer.

SEC. 27. Section 19059.5 of the Business and Professions Code is amended to read:

19059.5. Every sanitizer shall hold a sanitizer's license unless he or she is licensed as a home medical device retail facility by the State Department of Health Services.

SEC. 28. Section 109948 is added to the Health and Safety Code, to read:

109948. (a) ''Home medical device retail facility'' is an area, place, or premises, other than a licensed pharmacy, in and from which prescription devices, home medical devices, or home medical device services are sold, fitted, or dispensed pursuant to prescription. ''Home medical device retail facility'' includes, but is not limited to, any area or place in which prescription devices, home medical devices, or home medical device services are stored, possessed, prepared, manufactured, or repackaged, and from which the prescription devices, home medical devices, and home medical device services are furnished, sold, or dispensed at retail.

(b) ''Home medical device retail facility'' shall not include any area in a facility licensed by the department where floor supplies, ward supplies, operating room supplies, or emergency room supplies of prescription devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

(c) ''Home medical device retail facility'' shall not include any area of a home health agency licensed under Chapter 8 (commencing with Section 1725) of, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of Division 2 where the supplies specified in subdivision (c) of Section 4057 of the Business and Professions Code are stored or possessed solely for treatment of patients by a licensed home health agency or licensed hospice, as long as all prescription devices are furnished to these patients only upon the prescription or order of health care practitioners authorized to prescribe or order home medical devices or who use home medical devices or who use home medical devices to treat their patients.

SEC. 29. Section 109948.1 is added to the Health and Safety Code, to read:

109948.1. (a) ''Home medical device services'' means the delivery, installation, maintenance, replacement of, or instruction in the use of, home medical devices used by a sick or disabled individual to allow the individual to be maintained in a residence.

(b) ''Home medical device'' means a device intended for use in a home care setting including, but not limited to, all of the following:

(1) Oxygen and oxygen delivery systems.

(2) Ventilators.

(3) Continuous Positive Airway Pressure devices (CPAP).

(4) Respiratory disease management devices.

(5) Hospital beds and commodes.
(6) Electronic and computer driven wheelchairs and seating systems.
(7) Apnea monitors.
(8) Low air loss continuous pressure management devices.
(9) Transcutaneous Electrical Nerve Stimulator (TENS) units.
(10) Prescription devices.
(11) Medical gases for human consumption.
(12) Disposable medical supplies including, but not limited to, incontinence supplies as defined in Section 14125.1 of the Welfare and Institutions Code.
(13) In vitro diagnostic tests.
(14) Any other similar device as defined in regulations adopted by the department.

(c) The term ''home medical device'' does not include any of the following:

(1) Devices used or dispensed in the normal course of treating patients by hospitals and nursing facilities, other than devices delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical devices to an individual's residence.
(2) Prosthetics and orthotics.
(3) Automated external defibrillators (AEDs).
(4) Devices provided through a physician's office incident to a physician's service.
(5) Devices provided by a licensed pharmacist that are used to administer drugs that can be dispensed only by a licensed pharmacist.
(6) Enteral and parenteral devices provided by a licensed pharmacist.

SEC. 30. Section 110010.1 is added to the Health and Safety Code, to read:

110010.1. ''Prescription device'' means any device limited to prescription use under Section 111470.

SEC. 31. Section 110010.2 is added to the Health and Safety Code, to read:

110010.2. ''Prescription drug'' means any drug limited to prescription use under Section 111470.

SEC. 32. Section 111656 is added to the Health and Safety Code, to read:

111656. (a) No person shall conduct a home medical device retail facility business in the State of California unless he or she has obtained a license from the department. A license shall be required for each home medical device retail facility owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a home medical device retail facility in more than one location. The license shall be renewed annually and shall not be transferable. The

licensee shall be responsible for assuring compliance with all requirements of this article pertaining to home medical device retail facilities.

(b) Applications for a home medical device retail facility license shall be made on a form furnished by the department. The department may require any information it deems reasonably necessary to carry out the purposes of this section.

(c) A warehouse owned by a home medical device retail facility the primary purpose of which is storage, not dispensing of prescription devices to patients, shall be licensed at a fee one-half of that for a home medical device retail facility. There shall be no separate or additional license fee for warehouse premises owned by a home medical device retail facility that are physically connected to the retail premises or that share common access.

(d) The department may, at its discretion, issue a temporary license when the ownership of a home medical device retail facility is transferred from one person to another upon any conditions and for the periods of time as the department determines to be in the public interest. A temporary license fee shall be established by the department at an amount not to exceed the annual fee for renewal of a license to conduct a home medical device retail facility.

(e) Notwithstanding any other provision of law, a licensed home medical device retail facility may furnish a prescription device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations.

(f) The licensure requirements of this section shall not apply to the following entities or practitioners, unless the entities or practitioners furnish home medical devices or home medical device services through a separate entity including, but not limited to, a corporate entity, division, or other business entity:

(1) Home health agencies that do not have a Part B Medicare supplier number.

(2) Hospitals, excluding providers of home medical devices that are owned or related to a hospital.

(3) Manufacturers and wholesale distributors, if not selling directly to the patient.

(4) Health care practitioners authorized to prescribe or order home medical devices or who use home medical devices or who use home medical devices to treat their patients.

(5) Licensed pharmacists and pharmacies. Pharmacies that sell or rent home medical devices shall be governed by the provisions of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and

Professions Code and any rules and regulations adopted by the California State Board of Pharmacy.

(6) Licensed hospice programs.

(7) Licensed nursing homes.

(8) Licensed veterinarians.

(9) Licensed dentists.

(10) Emergency medical services provider.

SEC. 33. Section 111656.1 is added to the Health and Safety Code, to read:

111656.1. (a) After January 1, 2002, prior to issuing a license required by Section 111656, the department shall inspect each place of business to determine ownership, adequacy of facilities, and personnel qualifications. The department shall inspect each licensee at least annually thereafter. Nothing in this section shall prohibit the department from inspecting any medical device retail facility prior to January 1, 2002.

(b) The annual license fee for a home medical device retail facility shall be eight hundred fifty dollars ($850) until adjusted pursuant to subdivision (c).

(c) The annual license fee required by Sections 111656 and 111630 shall be adjusted annually, commencing July 1, 2003, by the department so that license fee revenues cover the estimated licensing program costs. Adjusted fee amounts shall take into account the resources required for inspections and other activities to support licensing during the previous year and shall take into account projected workload and changes in department overhead costs during the upcoming year.

(d) Commencing July 1, 2003, the department shall by July 30 of each year, publish the amount of fees to be charged as adjusted pursuant to this section. This adjustment of fees 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.

(e) Commencing January 1, 2003, the department shall, on or before January 10 of each year, provide the Legislature with a report recommending fee rates. The report shall describe the estimated licensing program costs for the next fiscal year to carry out the licensing, regulating, inspecting, and other duties and responsibilities of the department in carrying out the provisions of this article. The department shall describe the projected license fee amount so that license fee revenues cover the estimated licensing program costs. Projected fee amounts shall take into account the resources required for inspections and other activities to support licensing during the previous year and shall take into account projected workload and changes in department overhead costs during the upcoming year.

(f) The Drug and Device Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under this section and Sections 111656.7, 111656.8, 111656.12, and 111630, and fines and penalties collected by the department in the enforcement of this article, 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 provisions of this article relating to drugs and devices.

SEC. 34. Section 111656.2 is added to the Health and Safety Code, to read:

111656.2. (a) The following standards shall apply to all home medical device retail facilities:

(1) Each retail facility shall store prescription devices in a secure, lockable area.

(2) Each retail facility shall maintain the premises, fixtures, and equipment in a clean and orderly condition.

(3) Each retail facility shall maintain the premises in a dry, well-ventilated condition, free from contamination or other conditions that may render home medical devices unfit for their intended use.

(b) The department may by regulation impose any other standards pertaining to the acquisition, storage, and maintenance of prescription devices or other goods or to the maintenance or condition of the licensed premises of any home medical device retail facility as the department determines are reasonably necessary.

SEC. 35. Section 111656.3 is added to the Health and Safety Code, to read:

111656.3. (a) Each home medical device retail facility shall have written policies and procedures related to home medical device handling and, if authorized by the department pursuant to Section 111656.4, the dispensing of prescription devices. Those written policies and procedures shall be adequate to assure compliance with this article and shall include, but not be limited to:

(1) Training of staff, patients, and caregivers.

(2) Cleaning, storage, and maintenance of home medical devices necessary to prevent damage or contamination and to assure their operation in accordance with manufacturer specifications.

(3) Emergency services. If home medical device malfunction may threaten a patient's health, access to emergency services 24 hours per day, 365 days per year shall be available for device maintenance or replacement.

(4) Maintaining all records required by this article and any regulations adopted pursuant to the provisions of this article.

(5) Storage and security requirements to assure that prescription devices are dispensed in accordance with this article.

(6) Quality assurance.

(b) The home medical device retail facility shall make consultation available to the patient or primary caregiver about the proper use of devices and related supplies furnished by the home medical device retail facility. The home medical device retail facility shall notify the patient or primary care giver that this consultation is available.

(c) Each home medical device retail facility shall ensure all personnel who engage in the taking of orders for, the selling of, or the fitting of prescription devices, if authorized by the department pursuant to Section 111656.4, shall have training and demonstrate initial and continuing competence in the order-taking, fitting, and sale of prescription devices that the home medical device retail facility furnishes pursuant to Section 111656.4.

(d) Each home medical device retail facility shall prepare and maintain records of training and demonstrated employee competence required under this article for employees of the home medical device retail facility. The records shall be maintained for three years from and after the last date of employment.

(e) Each home medical device retail facility shall have an ongoing, documented quality assurance program that includes, but is not limited to, the following:

(1) Monitoring personnel performance to assure compliance with this article.

(2) Storage, maintenance, and dispensing of prescription devices to assure that prescription devices are dispensed in accordance with this article.

(f) The records and documents specified in subdivisions (a) and (e) shall be maintained for three years from the date of making. The records and documents described in subdivisions (a), (d), and (e), shall be open to inspection at all times during business hours by authorized agents of the department or an inspector from the California State Board of Pharmacy for the purpose of investigating a pharmacist.

SEC. 36. Section 111656.4 is added to the Health and Safety Code, to read:

111656.4. Section 4051 of the Business and Professions Code shall not prohibit a home medical device retail facility from selling or dispensing prescription devices if the department finds that sufficient qualified supervision is employed by the home medical device retail facility to adequately safeguard and protect the public health. Each person applying to the department for this exemption shall meet the following requirements to obtain and maintain the exemption:

(a) A licensed pharmacist or an exemptee who has taken and passed an examination administered by the department and whose certificate of

exemption is currently valid, shall be in charge of the home medical device retail facility.

(b) The licensed pharmacist or exemptee shall be on the premises at all times that prescription devices are available for sale or fitting unless the prescription devices are stored separately from other merchandise and are under the exclusive control of the licensed pharmacist or exemptee. A licensed pharmacist or an exemptee need not be present in the warehouse facility of a home medical device retail facility unless the department establishes that requirement by regulation based upon the need to protect the public.

(c) The department may require an exemptee to complete a designated number of hours of coursework in department-approved courses of home health education in the disposition of any disciplinary action taken against the exemptee.

(d) Each premises maintained by a home medical device retail facility shall have a license issued by the department and shall have a licensed pharmacist or exemptee on the premises if prescription devices are furnished, sold, or dispensed.

(e) A home medical device retail facility may establish locked storage (a lock box or locked area) for emergency or after working hours furnishing of prescription devices. Locked storage may be installed or placed in a service vehicle of the home medical device retail facility for emergency or after hours service to patients having prescriptions for prescription devices.

(f) The department may by regulation authorize a licensed pharmacist or exemptee to direct an employee of the home medical device retail facility who operates the service vehicle equipped with locked storage described in subdivision (e) to deliver a prescription device from the locked storage to patients having prescriptions for prescription devices. These regulations shall establish inventory requirements for the locked storage by a licensed pharmacist or exemptee to take place shortly after a prescription device has been delivered from the locked storage to a patient.

SEC. 37. Section 111656.5 is added to the Health and Safety Code, to read:

111656.5. (a) No person other than a licensed pharmacist, an intern pharmacist, an exemptee, as specified in Section 111656.4, or an authorized agent of the department or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the license issued by the department wherein prescription devices are stored, possessed, prepared, manufactured, or repacked, except that a licensed pharmacist or exemptee shall be responsible for any individual who enters the medical device retail facility for the purposes of receiving, fitting, or consultation from the licensed pharmacist or exemptee or any

person performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the home medical device retail facility. The licensed pharmacist or exemptee shall remain present in the home medical device retail facility any time an individual is present who is seeking a fitting or consultation. However, a licensed pharmacist or an exemptee need not be present on the premises of a home medical device retail facility at all times of its operation and need not to be present in a warehouse facility owned by a home medical device retail facility unless the department establishes that requirement by regulation based upon the need to protect the public. The exemptee need not be present if the prescription devices are stored in a secure locked area under the exclusive control of the exemptee and unavailable for dispensing. This subdivision shall apply only to prescription devices.

(b) A ''warehouse'' as used in this section, is a facility owned by a home medical device retail facility that is used for storage only. There shall be no fitting, display, or sales at that location. A licensed pharmacist or exemptee shall be designated as ''in charge'' of a warehouse but need not be present during its operation. The licensed pharmacist or exemptee may permit others to possess a key to the warehouse.

(c) Notwithstanding the remainder of this section, a home medical device retail facility may establish a locked facility, meeting the requirements of Section 111656.4, for furnishing prescription devices to patients having prescriptions for prescription devices in emergencies or after working hours.

(d) The department may establish reasonable security measures consistent with this section as a condition of licensing in order to prevent unauthorized persons from gaining access to the area, place, or premises, or to the prescription devices therein.

(e) The department may by regulation establish labeling requirements for prescription devices sold, fitted, or dispensed by a home medical device retail facility as it deems necessary for the protection of the public.

SEC. 38. Section 111656.6 is added to the Health and Safety Code, to read:

111656.6. Home medical devices for rental purposes shall at all times while under the control of the home medical device retail facility, be maintained in a clean and sanitary condition and in good working order following, where available, manufacturer specifications.

SEC. 39. Section 111656.7 is added to the Health and Safety Code, to read:

111656.7. (a) Without registering as an out-of-state home medical device retail facility, an out-of-state home medical device retail facility shall not sell or distribute prescription devices in this state through any

person or media other than a wholesaler who is licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(b) Applications for an out-of-state home medical device retail facility registration shall be made on a form furnished by the department. The department may require any information it deems reasonably necessary to carry out the purposes of this section.

(c) The Legislature by enacting this section does not intend a registration issued to any out-of-state home medical device retail facility pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state home medical device retail facility.

(d) The Legislature by enacting this section does not intend a registration issued to any out-of-state home medical device retail facility pursuant to this section to serve as any evidence that the out-of-state home medical device retail facility is doing business within this state.

SEC. 40. Section 111656.8 is added to the Health and Safety Code, to read:

111656.8. (a) No person acting as principal or agent for any out-of-state home medical device retail facility who has not obtained a registration from the department pursuant to this article and who sells or distributes prescription devices in this state that are not obtained through a wholesaler who has obtained a license pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, shall conduct the business of selling or distributing prescription devices within this state without registering with the department pursuant to this article.

(b) Registration of persons under this section shall be made on a form furnished by the department. The department may require any information as the department deems reasonably necessary to carry out the purposes of this section including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose prescription devices he or she is selling or distributing.

(c) The department may deny, revoke, or suspend the registration of persons registered under this article for any violation of this article or Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code or for any violation of Part 5 (commencing with Section 109875) of Division 104. The department may deny, revoke, or suspend the person's registration if the manufacturer whose prescription devices he or she is selling or

distributing violates this article or Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code or Part 5 (commencing with Section 109875) of Division 104.

(d) Registration under this section shall be renewed annually.

SEC. 41. Section 111656.9 is added to the Health and Safety Code, to read:

111656.9. When, in the opinion of the department, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a home medical device retail facility that does not meet all of the requirements for licensure as a home medical device retail facility, the department may waive any licensing requirements for that medical device retail facility.

SEC. 42. Section 111656.10 is added to the Health and Safety Code, to read:

111656.10. (a) The department may void the license of a home medical device retail facility, if the licensed premises remain closed, as defined in subdivision (e), other than by order of the department. For good cause shown, the department may void a license after a shorter period of closure. To void a license pursuant to this subdivision, the department shall make a diligent, good faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the department may void the license without the necessity of a hearing. If the licensee files a written objection, the department shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted in that chapter.

(b) In the event that the license of a home medical device retail facility is voided pursuant to subdivision (a) or revoked or a home medical device retail facility notifies the department of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all prescription devices to another licensee authorized to possess the prescription devices. The licensee transferring the prescription devices shall immediately confirm in writing to the department that the transfer has taken place.

(c) If a home medical device retail facility fails to comply with subdivision (b), the department may seek and obtain an order from the superior court in the county in which the home medical device retail facility is located, authorizing the department to enter the home medical device retail facility and inventory and store, transfer, sell, or arrange for the sale of, prescription devices found in the home medical device retail facility.

(d) In the event that the department sells or arranges for the sale of any prescription devices pursuant to subdivision (c), the department may retain from the proceeds of the sale an amount equal to the cost to the department of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the prescription devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the prescription devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) Where a statute or regulation requires the licensee to file with the department his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the department, and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the department for the remaining proceeds within 30 calendar days after the personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the department into the Drug and Device Safety Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, ''closed'' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a home medical device retail facility to be open seven days a week.

SEC. 43. Section 111656.11 is added to the Health and Safety Code, to read:

111656.11. (a) It is unlawful for any person who is neither a licensed pharmacist nor an exemptee to take charge of a home medical device retail facility or to furnish prescription devices except as otherwise provided in this article.

(b) It is unlawful for any person who has obtained a license to conduct a home medical device retail facility to fail to place a licensed pharmacist or exemptee in charge of that home medical device retail facility or for any person to, by himself or herself, or by any other person, permit the compounding or dispensing of prescriptions, except by a licensed pharmacist or exemptee or as otherwise provided in this article.

SEC. 44. Section 111656.12 is added to the Health and Safety Code, to read:

111656.12. (a) The fee for examination and investigation for an exemptee license under Section 111656.4 shall be one hundred dollars ($100).

(b) The fee for an exemptee license and annual renewal under Section 111656.4 shall be one hundred fifty dollars ($150).

(c) The fee for registration as an out-of-state home medical device retail facility or as the principal or agent of an out-of-state home medical device retail facility shall be one hundred fifty dollars ($150).

SEC. 45. Section 111656.13 is added to the Health and Safety Code, to read:

111656.13. (a) Any entity that prior to July 1, 2001, holds a current, valid license as a medical device retailer pursuant to Section 4130 of the Business and Professions Code, shall be deemed to be a licensed home medical device retail facility until the expiration of that license if the entity is in compliance with all applicable criteria for obtaining a license as a home medical device retail facility.

(b) Any entity that was not required to obtain a license as a medical device retailer in order to provide equipment or services prior to July 1, 2001, and that is required to obtain a license as a home medical device retail facility pursuant to Section 111656, shall apply for a license as a home medical device retail facility by July 1, 2001; however, the requirement for licensure shall only apply to those entities on and after January 1, 2002.

SEC. 46. Sections 1, 12, and 22 of this act shall become operative on July 1, 2001.

SEC. 47. 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 838

An act to amend Sections 42807, 42808, 42845, 42849, 42885, 42889, 42889.1, 42950, 42951, 42952, 42953, 42954, 42955, 42956, 42958, 42960, 42962, 42963, and 48100 of, to add Sections 42801.5, 42801.6, 42801.7, 42803.5, 42805.5, 42805.6, 42805.7, 42806.5, 42814, 42885.5, 42889.3, and 42889.4 to, to repeal Sections 42842, 42866, and

42959 of, and to repeal and add Sections 42843 and 42961.5 of, the Public Resources Code, relating to waste and used tires.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

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

(a) This state generates over 30 million waste tires annually. In addition, over 3 million tires are imported into the state each year. Of these tires, roughly 19 million are recycled annually.

(b) The state's landscape is also blighted by millions of tires illegally dumped or stockpiled. These stockpiles pose serious threats to the public health, safety, and environment, particularly when they are improperly maintained or catch fire. These negative environmental effects include habitat for pests and vectors, toxic smoke and residues, and contaminated air, water, and soil.

(c) This state has the unenviable distinction of having the largest tire problem and the lowest tire recycling fee of any state in the nation. Moreover, this state's tire recycling fee is due to sunset on January 1, 2001.

(d) Within the last 18 months, this state experienced two devastating tire fires; one at the Filbin stockpile in Westley and the other at the Royster stockpile in Tracy. These two fires burned over 8 million tires, resulting in considerable environmental damage to the region and significant adverse impacts to local residents. These two fires also highlighted the need for additional state and local regulatory authority in the waste tire area.

(e) Without significant expansion of existing markets for waste tires, such as rubberized asphalt concrete, playground mats and other surfacing, civil engineering applications, tire derived fuel and the development of new technologies that use waste tires, the tire stockpiles, both legal and illegal, and the environmental threat they pose, will continue to grow.

(f) The California Integrated Waste Management Board's recent tire report, required by Section 42871 of the Public Resources Code, discussed the tire situation in the state, described how other states addressed their tire issues, and detailed enforcement provisions and regulatory actions needed to deal with this state's tire problem.

(g) The purpose of this act is to do all of the following:

(1) Implement many of the enforcement, market development, administrative, and technical recommendations outlined in the California Integrated Waste Management Board's recent report on California's waste tire recycling enhancement program.

(2) Encourage tire manufacturers to promote the use of retreaded and longer-lasting tires, as well as develop recycled-content rubber tires.

(3) Stimulate waste and used tire market development activities, while cleaning up existing waste tire piles and enforcing waste and used tire laws.

(4) Improve the current tire manifest system.

(5) Increase state government's procurement and use of recycled-content tire products, such as rubberized asphalt concrete, crumb rubber products, and civil engineering applications.

SEC. 2. Section 42801.5 is added to the Public Resources Code, to read:

42801.5. (a) ''Altered waste tire'' means a waste tire that has been baled, shredded, chopped, or split apart. ''Altered waste tire'' does not mean crumb rubber.

(b) ''Alteration'' or ''altering,'' with reference to a waste tire, means an action that produces an altered waste tire.

SEC. 3. Section 42801.6 is added to the Public Resources Code, to read:

42801.6. ''Baled tire'' means either a whole or an altered tire that has been compressed and then secured with a binding material for the purpose of reducing its volume.

SEC. 4. Section 42801.7 is added to the Public Resources Code, to read:

42801.7. ''Crumb rubber'' means rubber granules derived from a waste tire that are less than or equal to, one-quarter inch or six millimeters in size.

SEC. 5. Section 42803.5 is added to the Public Resources Code, to read:

42803.5. ''New or used motor vehicle'' means any device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

SEC. 6. Section 42805.5 is added to the Public Resources Code, to read:

42805.5. ''Repairable tire'' means a worn, damaged, or defective tire that is retreadable, recappable, or regrooveable, or that can be otherwise repaired to return the tire to its use as a vehicle tire, and that meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

SEC. 7. Section 42805.6 is added to the Public Resources Code, to read:

42805.6. ''Scrap tire'' means a worn, damaged, or defective tire that is not a repairable tire.

SEC. 8. Section 42805.7 is added to the Public Resources Code, to read:

42805.7. ''Tire derived product'' means material that meets both of the following requirements:

(a) Is derived from a process using whole tires as a feedstock. A process using whole tires includes, but is not limited to, shredding, crumbing, or chipping.

(b) Has been sold and removed from the processing facility.

SEC. 9. Section 42806.5 is added to the Public Resources Code, to read:

42806.5. ''Used tire'' means a tire that meets all of the following requirements:

(a) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(b) The tire meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(c) (1) The used tire is stored by size in a rack or a stack, but not in a pile, in a manner approved by the local fire marshal and vector control authorities and in accordance with the state minimum standards.

(2) A used tire stored pursuant to this section shall be stored in a manner to allow the inspection of each individual tire.

SEC. 10. Section 42807 of the Public Resources Code is amended to read:

42807. ''Waste tire'' means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, and altered waste tire, but does not include a tire derived product, crumb rubber, or a used tire that is organized for inspection and resale by size in a rack or a stack in accordance with Section 42806.5.

SEC. 10.5. Section 42808 of the Public Resources Code is amended to read:

42808. ''Waste tire facility'' means a location, other than a solid waste facility permitted pursuant to this division that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, waste tires are stored, stockpiled, accumulated, or discarded. ''Waste tire facility'' includes all of the following:

(a) ''Existing waste tire facility'' means a waste tire facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) ''Major waste tire facility'' means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

(c) ''Minor waste tire facility'' means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded. However, a ''minor waste tire facility'' does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores used or waste tires on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 total used or waste tires are ever accumulated on the dealer's or dismantler's premises.

SEC. 11. Section 42814 is added to the Public Resources Code, to read:

42814. (a) If approved by the board, any generator, waste and used tire hauler, or operator of a waste tire facility that is subject to the manifest requirements of Section 42961.5, may submit an electronic report to the department, in lieu of the copy of the manifest required by subdivision (b), (c), or (d) of Section 42961.5. The electronic report shall include all information required to be on the California Uniform Waste and Used Tire Manifest, and any other information required by the board.

(b) A generator, waste and used tire hauler, or operator of a waste tire facility subject to subdivision (a) may submit the electronic reports to the board on a quarterly schedule.

SEC. 12. Section 42842 of the Public Resources Code is repealed.

SEC. 13. Section 42843 of the Public Resources Code is repealed.

SEC. 14. Section 42843 is added to the Public Resources Code, to read:

42843. (a) The board, after holding a hearing in accordance with the procedures set forth in Sections 11503 to 11519, inclusive, of the Government Code, may revoke, suspend, or deny a waste tire facility permit for a period of up to three years, if the board determines any of the following:

(1) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(2) The operator of the waste tire facility, during the previous three years, has been issued a final order for, failed to comply with, or has been convicted of, any of the following:

(A) One or more violations of this chapter or the regulations adopted pursuant to this chapter.

(B) One or more violations of Chapter 19 (commencing with Section 42950) or the regulations adopted pursuant to that chapter.

(C) The terms or conditions of the operator's waste tire facility permit.

(D) Any order, direction, or penalty issued by the board relating to the safe storage or processing of waste tires.

(b) If the board determines that a violation specified in paragraph (2) of subdivision (a) demonstrates a chronic, recurring pattern of noncompliance that poses, or may pose, a significant risk to public health and safety or the environment, or if the violation has not been corrected or reasonable progress toward correction has not been achieved, the board may suspend, revoke, or deny a waste tire facility permit, in accordance with the procedure specified in subdivision (a), for a period of not more than five years.

(c) If the board determines that a violation specified in paragraph (2) of subdivision (a) has resulted in significant harm to human health or the environment, the board may suspend, revoke, or deny a waste tire facility permit, in accordance with the procedure specified in subdivision (a), for a period of five years or greater.

SEC. 14.5. Section 42845 of the Public Resources Code is amended to read:

42845. (a) Any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of the board, clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action.

(b) Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, district attorney, or county counsel, at the request of the board, shall petition, within 45 days of the discovery of that failure, the superior court for that county for the issuance of an injunction requiring the person to comply with that order. In any suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

SEC. 15. Section 42849 of the Public Resources Code is amended to read:

42849. (a) ''Threaten'' or ''threat,'' for purposes of this article, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

(b) If the board finds either an imminent threat to public health, safety, or the environment, or a threat, as defined by subdivision (a), the board may conduct an emergency meeting to determine the legal, enforcement, cleanup, or other necessary actions that may be taken to correct that imminent threat or threat. Such a finding by the board shall be deemed to be an ''emergency situation'' for purposes of, and in addition to the situations described in, Section 11125.5 of the Government Code.

SEC. 15.5. Section 42866 of the Public Resources Code is repealed.

SEC. 16. Section 42885 of the Public Resources Code is amended to read:

42885. (a) For purposes of this section, ''California tire fee'' means the fee imposed pursuant to this section.

(b) (1) (A) On and before December 31, 2006, every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of one dollar ($1.00) per tire.

(B) On and after January 1, 2007, every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of seventy-five cents ($0.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (a) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) Any person or business who knowingly, or with reckless disregard, makes any false statement or representation in any document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars ($25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that

specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, ''new tire'' means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, including the spare tire, construction equipment, or farm equipment. ''New tire'' does not include retreaded, reused, or recycled tires.

SEC. 17. Section 42885.5 is added to the Public Resources Code, to read:

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy and fiscal committees of the Legislature. The board shall include, in the plan, programmatic and fiscal issues including, but not limited to, the hierarchy used by the board to maximize productive uses of waste and used tires and the performance objectives and measurement criteria used by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

SEC. 18. Section 42889 of the Public Resources Code is amended to read:

42889. Funding for the waste tire program shall be appropriated to the board in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the board. The moneys in the fund shall be expended for the payment of refunds under this chapter and for the following purposes:

(a) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(b) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42855.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal disposal of waste tires and used tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(e) To pay the costs of cleanup, abatement, removal, or other remedial action related to tire stockpiles throughout the state, including, all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars ($6,500,000) shall be expended by the board during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(f) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of tires.

(g) To assist in developing markets and new technologies for used tires and waste tires. The board's expenditure of funds for purposes of this subdivision shall reflect the priorities for waste management practices specified in subdivision (a) of Section 40051.

(h) To pay the costs associated with implementing and operating a waste tire and used tire hauler program and manifest system pursuant to Chapter 19 (commencing with Section 42950).

(i) To pay the costs to create and maintain an emergency reserve, which shall not exceed one million dollars ($1,000,000).

(j) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of used whole tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program

established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

(k) To pay the costs associated with the preparation of a report by the Office of Environmental Health Hazard Assessment, in consultation with the State Air Resources Board, the Integrated Waste Management Board, and the State Department of Health Services, that includes, at a minimum, the major chemical constituents of smoke from burning tires, the toxicity of those chemicals, and the potential effects on human health from exposure to smoke from the tire fires. The report shall be submitted to the Governor, the Legislature, and the board by December 21, 2001. The cost of preparing this report shall not exceed one hundred fifty thousand dollars ($150,000).

SEC. 19. Section 42889.1 of the Public Resources Code is amended to read:

42889.1. Every two years, in conjunction with the State Budget submitted to the Legislature pursuant to Section 12 of Article IV of the California Constitution, the board shall submit to the appropriate legislative policy and fiscal committees a plan that describes the grants, loans, contracts, and other expenditures proposed to be made by the board under the tire recycling program.

SEC. 20. Section 42889.3 is added to the Public Resources Code, to read:

42889.3. On or before January 1 of each year, the Department of Transportation shall report to the Legislature and the board on the use of waste tires in transportation and civil engineering projects during the previous five years, including, but not limited to, the approximate number of tires used every year, and the types and location of these projects.

SEC. 20.5. Section 42889.4 is added to the Public Resources Code, to read:

42889.4. On or before January 1 of each year, the State Air Resources Board, in conjunction with air pollution control districts and air quality management districts, shall submit an annual report to the Governor, the Legislature, and the board summarizing the types and quantities of air emissions, if any, from facilities permitted to burn tires during the previous year.

SEC. 21. Section 42950 of the Public Resources Code is amended to read:

42950. For purposes of this chapter, the following definitions apply:

(a) ''Agricultural purposes'' means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures at an agricultural site.

(b) (1) ''Altered waste tire'' means a waste tire that has been baled, shredded, chopped, or split apart. ''Altered waste tire'' does not mean crumb rubber.

(2) ''Alteration'' or ''altering,'' with reference to a waste tire, means an action that produces an altered waste tire.

(c) ''Applicant'' means any person seeking to register as a waste tire hauler.

(d) ''Baled tire'' means either a whole or an altered tire that has been compressed and then secured with a binding material for the purpose of reducing its volume.

(e) ''Common carrier'' means a ''common carrier,'' as defined in Section 211 of the Public Utilities Code.

(f) ''Crumb rubber'' means rubber granules derived from a waste tire that are less than or one-quarter inch or six millimeters in size.

(g) ''Repairable tire'' means a worn, damaged, or defective tire that is retreadable, recappable, or regrooveable, or that can be otherwise repaired to return the tire to use as a vehicle tire, and that meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(h) ''Scrap tire'' means a worn, damaged, or defective tire that is not a repairable tire.

(i) ''Tire derived product'' means material that meets both of the following requirements:

(1) Is derived from a process using whole tires as a feedstock. A process using whole tires includes, but is not limited to, shredding, crumbing, or chipping.

(2) Has been sold and removed from the processing facility.

(j) ''Used tire'' means a tire that meets all of the following requirements:

(1) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(2) The tire meets the applicable requirements of the Vehicle Code and of Title 13 of the California Code of Regulations.

(3) (A) The used tire is stored by size in a rack or a stack, but not in a pile, in a manner approved by the local fire marshal and vector control authorities and in accordance with the state minimum standards.

(B) A used tire stored pursuant to this section shall be stored in a manner to allow the inspection of each individual tire.

(k) ''Waste tire'' means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, and altered waste tire, but does not include a tire derived product, crumb rubber, or a used tire that is

organized for inspection and resale by size in a rack or a stack in accordance with subdivision (j).

SEC. 22. Section 42951 of the Public Resources Code is amended to read:

42951. (a) Every person who engages in the transportation of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt as specified in Section 42954.

(b) A registered waste and used tire hauler shall only transport waste or used tires to a facility that is permitted by the board or exempted pursuant to this division to accept waste and used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal.

SEC. 23. Section 42952 of the Public Resources Code is amended to read:

42952. Except as provided in Section 42954, any person engaged in transporting waste or used tires shall comply with all of the following requirements:

(a) The person shall be registered as a waste and used tire hauler with the board.

(b) The person shall not advertise or represent himself or herself as being in the business of a waste and used tire hauler without being registered as a waste and used tire hauler by the board.

SEC. 24. Section 42953 of the Public Resources Code is amended to read:

42953. Any person who gives, contracts, or arranges with another person to transport waste or used tires shall utilize only a person holding a valid waste and used tire hauler registration from the board, unless the hauler is exempt as specified in Section 42954.

SEC. 25. Section 42954 of the Public Resources Code is amended to read:

42954. (a) A person who hauls waste or used tires is exempt from registration under this chapter if at least one of the following conditions is met:

(1) The person is a solid waste collector operating under a license or franchise from any local government and transports fewer than 10 waste or used tires at any one time.

(2) The person transports fewer than 10 waste or used tires at any one time.

(3) The person is the United States, the State of California, or any county, city, town, or municipality in the state, except when vehicles the public agency owns or operates are used as a waste and used tire carrier for hire.

(4) The waste or used tires were inadvertently mixed or commingled with solid waste and it is not economical or safe to remove or recover them.

(5) The vehicle originated outside the boundaries of the state and is destined for a point outside the boundaries of the state, if no waste or used tires are loaded or unloaded within the boundaries of the state.

(6) The person is hauling waste or used tires for agricultural purposes. However, notwithstanding Section 42961.5, a person hauling waste or used tires for agricultural purposes shall carry a manifest from the generator in the vehicle during transportation, which may be destroyed after delivery.

(7) The waste or used tires were hauled by a common carrier who transported something other than waste or used tires to an original destination point and then transported waste or used tires on the return part of the trip, and the revenue derived from the waste or used tires is incidental when compared to the revenue earned by the carrier.

(8) The person is transporting waste or used tires to an amnesty day event or to a legal disposal site and has received written authorization from the local enforcement agency specifying conditions for that hauling for one day.

(9) The person complies with any additional conditions for exemption, as approved by the board.

(b) Any person who transports tires in violation of subdivision (b) of Section 42951 shall not be exempt pursuant to subdivision (a).

SEC. 26. Section 42955 of the Public Resources Code is amended to read:

42955. An application for a new or renewed waste and used tire hauler registration shall be made on a form approved by the board. The application shall include, but not be limited to, all of the following:

(a) A vehicle description, vehicle identification number, vehicle license number, and the name of the registered vehicle owner for each vehicle used for transporting waste or used tires.

(b) The business name under which the hauler operates, and the business owners' name, address, and telephone number.

(c) Other business names under which the hauler operates.

(d) A bond in favor of the State of California in the amount of ten thousand dollars ($10,000). Proof of bond renewal shall be submitted with the application for annual renewal of a waste and used tire hauler registration.

(e) Any additional information required by the board.

SEC. 27. Section 42956 of the Public Resources Code is amended to read:

42956. (a) Upon approval of an application submitted pursuant to Section 42955, the board shall issue a waste and used tire hauler registration to be carried in the vehicle and a waste and used tire hauler decal to be permanently affixed to the lower right hand corner of the windshield.

(b) Any person who operates a vehicle or who authorizes the operation of a vehicle that transports 10 or more tires without a valid and current waste and used tire hauler registration, as issued by the board pursuant to Section 42955, shall be subject to the enforcement actions specified in Article 4 (commencing with Section 42962).

(c) The waste and used tire hauler registration shall be presented upon demand of an authorized representative of the board.

SEC. 28. Section 42958 of the Public Resources Code is amended to read:

42958. The initial waste and used tire hauler registration issued pursuant to this chapter shall be valid from the date of issuance to January 1 of the subsequent calendar year. Subsequent renewals shall be valid for one calendar year. The registration shall be renewed prior to its expiration.

SEC. 29. Section 42959 of the Public Resources Code is repealed.

SEC. 30. Section 42960 of the Public Resources Code is amended to read:

42960. (a) The board may suspend, revoke, or deny a waste and used tire hauler registration for a period of up to three years, by filing an accusation in accordance with the procedures of Sections 11505 to 11519, inclusive, of the Government Code, if the holder of the registration does any of the following:

(1) Commits more than three violations of, or fails to comply with any requirements of, this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, within a one year period.

(2) Commits, aids, or abets any violation of this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, or permits an agent to do so, and the board determines that the violation poses an immediate threat of harm to public safety or to the environment.

(3) Commits, aids, or abets a failure to comply with this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, or permits an agent to do so, and the board determines that the failure to comply shows a repeating or recurring occurrence or that the failure to comply may pose a threat to public health or safety or the environment.

(4) Commits any misrepresentation or omission of a significant fact or other required information in the application for a waste and used tire hauler registration or commits any misrepresentation or omission of fact on any manifest more than three times in one year.

(b) The board may suspend, revoke, or deny a waste and used tire hauler registration for a period of three years to five years, or may suspend, revoke, or deny a waste and used tire hauler registration

permanently, in accordance with the procedures specified in subdivision (a), under any of the following circumstances:

(1) The hauler's registration has been previously revoked or denied for any violation specified in subdivision (a).

(2) The hauler has been previously fined pursuant to this chapter or Chapter 16 (commencing with Section 42800).

(3) The board determines that the hauler's operations pose a significant threat to public health and safety.

SEC. 31. Section 42961.5 of the Public Resources Code is repealed.

SEC. 32. Section 42961.5 is added to the Public Resources Code, to read:

42961.5. (a) For purposes of this chapter, ''California Uniform Waste and Used Tire Manifest'' means a shipping document signed by a generator of waste or used tires, a waste and used tire hauler, or the operator of a waste or used tire facility that contains all of the information required by the board, including, but not limited to, an accurate measurement of the number of tires being shipped, the type or types of the tires, the date the shipment originated, and the origin and intended final destination of the shipment.

(b) Any person generating waste or used tires that are transported or submitted for transportation, for offsite handling, altering, storage, disposal, or for any combination thereof, shall complete a California Uniform Waste and Used Tire Manifest, as required by the board. The generator shall provide the manifest to the waste and used tire hauler at the time of transfer of the tires. Each generator shall submit to the board, on a quarterly schedule, a legible copy of each manifest. The copy submitted to the board shall contain the signatures of the generator and the waste and used tire hauler. If approved by the board, in lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the board meeting the requirements of Section 42814.

(c) (1) Any waste and used tire hauler registered as required by subdivision (a) of Section 42951 shall have the California Uniform Waste and Used Tire Manifest in his or her possession while transporting waste or used tires. The manifest shall be shown upon demand to any representative of the board, any officer of the California Highway Patrol, or any local public officer designated by the local enforcement agency.

(2) Any waste and used tire hauler hauling waste or used tires for offsite handling, altering, storage, disposal, or any combination thereof, shall complete the California Uniform Waste and Used Tire Manifest as required by the board. The waste and used tire hauler shall provide the manifest to the waste or used tire facility operator who receives the waste or used tires for handling, altering, storage, disposal, or any combination thereof. Each waste and used tire hauler shall submit to the board, on a

quarterly schedule, a legible copy of each manifest. The copy submitted to the board shall contain the signatures of the generator and the facility operator. If approved by the board, in lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the board meeting the requirements of Section 42814.

(d) Each waste or used tire facility operator that receives waste or used tires for handling, altering, storage, disposal, or any combination thereof, that was transported with a manifest pursuant to this section, shall submit copies of each manifest provided by the waste and used tire hauler to the board and the generator on a quarterly schedule. The copy submitted to the board shall contain the signatures of each generator, each transporter, and the facility operator. If approved by the board, in lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the board meeting the requirements of Section 42814.

(e) The board shall develop and implement a system for auditing manifests submitted to the board pursuant to this section, for the purpose of enforcing this section. The board or its agent shall continuously conduct random sampling and matching of manifests submitted by any person generating waste or used tires, hauling waste or used tires, or operating waste or used tire facilities, to assure compliance with this section.

SEC. 33. Section 42962 of the Public Resources Code is amended to read:

42962. (a) Any person who does any of the following shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or for continuing violations for each day that violation continues:

(1) Intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter.

(2) Knowingly, or with reckless disregard, makes any false statement or representation in any application, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter.

(b) Liability under subdivision (a) may be imposed in a civil action.

(c) In addition to the civil penalty that may be imposed pursuant to subdivision (a), the board may impose civil penalties administratively in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or for continuing violations for each day that violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the procedures and amounts for the imposition of administrative civil penalties pursuant to this subdivision.

SEC. 34. Section 42963 of the Public Resources Code is amended to read:

42963. This chapter, or any regulations adopted pursuant to Section 42966, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on facilities that handle waste or used tires in order to protect the public health and safety or the environment, including preventing or mitigating potential nuisances, if the conditions or restrictions do not conflict with, or impose less stringent requirements than, this chapter or those regulations. However, this chapter, including any regulations that are adopted pursuant to Section 42966, is intended to establish a uniform statewide program for the regulation of waste and used tire haulers that will prevent the illegal disposal of tires, but which will not subject waste and used tire haulers to multiple registration or manifest requirements. Therefore, any local laws regulating the transportation of waste or used tires are preempted by this chapter.

SEC. 35. Section 48100 of the Public Resources Code is amended to read:

48100. (a) The Legislature hereby finds and declares that illegal disposal of solid waste on property owned by innocent parties is a longstanding problem needing attention and that grants provided under this chapter will support the cleanup of farm and ranch property.

(b) On or before January 1, 1999, the board shall establish a farm and ranch solid waste cleanup and abatement grant program under which cities and counties may seek financial assistance for the purposes of cleaning up and abating the effects of illegally disposed solid waste pursuant to this chapter.

(c) (1) The Farm and Ranch Solid Waste Cleanup and Abatement Account is hereby created in the General Fund and may be expended by the board, upon appropriation by the Legislature in the annual Budget Act, for the purposes of this chapter.

(2) The following funds shall be deposited into the account:

(A) Money appropriated by the Legislature from the Integrated Waste Management Fund or the California Used Oil Recycling Fund to the board for the grant program, or from the California Tire Recycling Management Fund to the board for the purposes set forth in subdivision (j) of Section 42889.

(B) Notwithstanding Section 16475 of the Government Code, any interest earned on the money in the account.

(3) The board may expend the money in the account for both of the following purposes:

(A) To pay the costs of implementing this chapter, which costs shall not exceed 7 percent of the funds available for the grant program.

(B) To make payments to cities and counties for grants authorized by this chapter.

(4) Upon authorization by the Legislature in the annual Budget Act, the sum of all funds transferred into the account from other funds or accounts shall not exceed one million dollars ($1,000,000) annually.

(5) Notwithstanding any other provision of law, the grant program shall be funded from the following funds:

(A) The Integrated Waste Management Fund.

(B) The California Tire Recycling Management Fund, for the purposes set forth in subdivision (j) of Section 42889.

(C) The California Used Oil Recycling Fund.

SEC. 36. 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 repeal and add Section 18993.9 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 18993.9 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 18993.9 is added to the Welfare and Institutions Code, to read:

18993.9. The program provided for under this chapter shall be implemented only to the extent that funds are appropriated in the Budget Act.

CHAPTER 840

An act to add Chapter 9.5 (commencing with Section 54964) to Part 1 of Division 2 of the Government Code, relating to elections.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Chapter 9.5 (commencing with Section 54964) is added to Part 1 of Division 2 of the Government Code, to read:

CHAPTER 9.5. UNLAWFUL EXPENDITURES

54964. (a) An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.

(b) As used in this section the following terms have the following meanings:

(1) ''Ballot measure'' means an initiative, referendum, or recall measure certified to appear on a regular or special election ballot of the local agency, or other measure submitted to the voters by the governing body at a regular or special election of the local agency.

(2) ''Candidate'' means an individual who has qualified to have his or her name listed on the ballot, or who has qualified to have write-in votes on his or her behalf counted by elections officials, for nomination or election to an elective office at any regular or special primary or general election of the local agency, and includes any officeholder who is the subject of a recall election.

(3) ''Expenditure'' means a payment of local agency funds that is used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters. ''Expenditure'' shall not include membership dues paid by the local agency to a professional association.

(4) ''Local agency'' has the same meaning as defined in Section 54951, but does not include a county superintendent of schools, an elementary, high, or unified school district, or a community college district.

(c) This section does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if both of the following conditions are met:

(1) The informational activities are not otherwise prohibited by the Constitution or laws of this state.

(2) The information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

(d) This section does not apply to the political activities of school officers and employees of a county superintendent of schools, an elementary, high, or unified school district, or a community college district that are regulated by Article 2 (commencing with Section 7050) of Chapter 1 of Part 5 of the Education Code.

CHAPTER 841

An act to add Section 1276.05 to the Health and Safety Code, relating to health facilities, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1276.05 is added to the Health and Safety Code, to read:

1276.05. (a) The Office of Statewide Health Planning and Development shall allow any general acute care hospital facility that needs to relocate services on an interim basis as part of its approval plan for compliance with the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107) flexibility in achieving compliance with, or in substantial satisfaction the objectives of, building standards adopted pursuant to Section 1276 with regard to the use of interim space for the provision of hospital services, or both, on a case-by-case basis so long as public safety is not compromised.

(b) The state department shall allow any facility to which subdivision (a) applies flexibility in achieving compliance with, or in substantial satisfaction of, the objectives of licensing standards, or both, with regard to the use of interim space for the provision of hospital services, or both, on a case-by-case basis so long as public safety is not compromised.

(c) Hospital licensees, upon application for program flexibility under this section, shall provide public notice of the proposed interim use of space that houses at least one of the eight basic services that are required in a general acute care hospital in a manner that is likely to reach a

substantial number of residents of the community served by the facility and employees of the facility.

(d) No request shall be approved under this section for a waiver of any primary structural system, fire and life safety requirements, or any requirement with respect to accessibility for persons with disabilities.

(e) In approving any request pursuant to this section for flexibility, the office shall consider public comments.

(f) The state department shall establish a unit with two statewide liaisons for the purposes of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107), to do all of the following:

(1) Serve as a central resource for hospital representatives on licensing issues relative to the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 and provide licensing information to the public, upon request.

(2) Serve as liaison with the Office of Statewide Health Planning and Development, the State Fire Marshal, the Seismic Safety Commission, and other entities as necessary on hospital operational issues with respect to Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983.

(3) Ensure statewide compliance with respect to licensing issues relative to hospital buildings that are required to meet standards established by the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983.

(4) Process requests for program flexibility under subdivision (a).

(5) Accept and consider public comments on requests for flexibility.

(g) Each compliance plan, in providing for an interim use of space, shall identify the duration of time proposed for the interim use of the space. Upon any amendment of a hospital's approved compliance plan, any hospital for which a flexibility plan has been approved pursuant to subdivision (a) shall provide a copy of the amended plan to the State Department of Health Services within 30 days.

SEC. 2. The sum of one hundred forty-five thousand dollars ($145,000) is appropriated from the General Fund to the State Department for the purpose of establishing the Alfred E. Alquist Hospital Facilities Seismic Safety Act Unit.

CHAPTER 842

An act to add Section 14085.54 to the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 14085.54 is added to the Welfare and Institutions Code, to read:

14085.54. (a) The Los Angeles County University of Southern California (LAC-USC) Medical Center may submit revised final plans to the Office of Statewide Health Planning and Development to replace the original capital expenditure project plans that met the initial eligibility requirements provided for under Section 14085.5 if all of the following conditions are met:

(1) The revised capital expenditure project meets all other requirements for eligibility as specified in Section 14085.5.

(2) The revised plans are submitted to the Office of Statewide Health Planning and Development on or before December 31, 2002, except that, with respect to a facility in the San Gabriel Valley of not less than 80 beds, the revised plans may be submitted not later than December 31, 2003.

(3) The scope of the capital project shall consist of two facilities with not less than a total of 680 beds.

(b) Funding under Section 14085.5 shall not be provided unless all of the conditions specified in subdivision (a) are met.

(c) The revised plans for the LAC-USC Medical Center Capital expenditure project may provide for one or more of the following variations from the original capital expenditure project plan submission:

(1) Total revisions or reconfigurations, or reductions in size and scope.

(2) Reduction in, or modification of, some or all inpatient project components.

(3) Tenant interior improvements not specified in the original capital expenditure project plan submission.

(4) Modifications to the foundation, structural frame, and building exterior shell, commonly known as the shell and core.

(5) Modifications necessary to comply with current seismic safety standards.

(6) Expansion of outpatient service facilities that operate under the LAC-USC Medical Center license.

(d) The revised capital expenditure project may provide for an additional inpatient service site to the current LAC-USC Medical Center only if the additional inpatient service site meets both of the following criteria:

(1) The San Gabriel Valley site is owned and operated by the County of Los Angeles.

(2) The San Gabriel Valley site is consolidated under the LAC-USC Medical Center license.

(e) (1) Supplemental reimbursement for the revised capital expenditure project for LAC-USC Medical Center, as described in this section, shall be calculated pursuant to subdivision (c) of Section 14085.5, as authorized and limited by this section. The initial Medi-Cal inpatient utilization rate for the LAC-USC Medical Center, for purposes of calculating the supplemental reimbursement, shall be that which was established at the point of the original capital expenditure project plan submission. The revised capital expenditure project costs, including project costs related to the additional inpatient service site, eligible for supplemental reimbursement under this section shall not exceed 85 percent of the project costs, including all eligible construction, architectural and engineering, design, management and consultant costs that would have qualified for supplemental reimbursement under the original capital project. The Legislature finds that the original qualifying amount was one billion two hundred sixty-nine million seven hundred thirty-five thousand dollars ($1,269,735,000).

(2) Notwithstanding any other provision of this section, any portion of the revised capital expenditure project for which the County of Los Angeles is reimbursed by the Federal Emergency Management Agency and the State Office of Emergency Services shall not be considered eligible project costs for purposes of determining supplemental reimbursement under Section 14085.5.

(3) The department shall seek a medicaid state plan amendment in order to maximize federal financial participation. However, if the department is unable to obtain federal financial participation at the Medi-Cal inpatient adjustment rate as described in paragraph (1), the state shall fully fund any amount that would otherwise be funded under this section, but for which federal financial participation cannot be obtained.

(f) The LAC-USC Medical Center shall provide written notification to the department of the status of the project on or before January 1 of each year, commencing January 1, 2002. This notification shall, at a minimum, include a narrative description of the project, identification of services to be provided, documentation substantiating service needs, projected construction timeframes, and total estimated revised capital project costs.

(g) The project, if eligible under the criteria set forth in this section and Section 14085.5, shall commence construction at both facilities referred to in subdivision (a) on or before January 1, 2004.

(h) In addition to the requirements of subdivision (f), the project shall be licensed for operation and available for occupancy on or before January 1, 2009.

(i) On or before August 15, 2001, the County of Los Angeles may withdraw any revised final plans that are submitted pursuant to this

section prior to that date if the Board of Supervisors of Los Angeles County finds that insufficient funds are available to carry out the capital expenditure project described in this section.

SEC. 2. (a) The Legislature finds and declares that in an effort to protect the fragile health care delivery system of Los Angeles County, an objective analysis of the community's health care needs is required.

(b) Therefore, two years prior to obtaining the certificate of occupancy for the LAC-USC Medical Center replacement facility referred to in subdivision (a) of Section 14085.54 of the Welfare and Institutions Code, the Legislature and Los Angeles County shall complete a report that assesses the health care needs of the residents of the county and the catchment area of the LAC-USC Medical Center. The role of the Women's and Children's Hospital in meeting the community's needs shall be included in this report. The report shall be submitted to the Governor for review.

(c) Each recommendation jointly agreed to by the state and the Board of Supervisors of Los Angeles County shall be submitted to the Legislature for consideration. The state and Los Angeles County shall, in good faith, implement the jointly agreed recommendations not otherwise requiring statutory change.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 843

An act to amend Section 650 of the Business and Professions Code, to amend Sections 750 and 1873 of the Insurance Code, and to amend Section 549 of the Penal Code, relating to insurance.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 650 of the Business and Professions Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery,

receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

''Health care facility'' means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

SEC. 2. Section 750 of the Insurance Code is amended to read:

750. (a) Except as provided in Section 750.5, any person acting individually or through his or her employees or agents, who engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance, and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether

in the form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customers, is guilty of a crime.

(b) A violation of subdivision (a) is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

(c) Nothing in this section shall prohibit a licensed collection or lien agency from receiving a commission on the collection of delinquent debts nor prohibits the agency from paying its employees a commission for obtaining clients seeking collection on delinquent debts.

(d) Nothing in this section is intended to limit, restrict, or in any way apply to, the rebating of commissions by insurance agents or brokers, as authorized by Proposition 103, enacted by the people at the November 8, 1988, general election.

SEC. 3. Section 1873 of the Insurance Code is amended to read:

1873. (a) Upon written request to an insurer by officers designated in subdivisions (a) and (b) of Section 830.1 and subdivision (a) of Section 830.2, and subdivisions (a), (c), and (i) of Section 830.3 of the Penal Code, an insurer, or agent authorized by that insurer to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any specific insurance fraud. Relevant information may include, but is not limited to, all of the following:

(1) Insurance policy information relevant to the insurance fraud under investigation, including, but not limited to, any application for a policy.

(2) Policy premium payment records which are available.

(3) History of previous claims made by the insured.

(4) Information relating to the investigation of the insurance fraud, including statements of any person, proof of loss, and notice of loss.

(5) Complete copies of both sides of payment drafts.

(b) The provisions of subdivision (a) shall not operate to authorize disclosure of medical information not otherwise authorized for disclosure pursuant to law.

SEC. 4. Section 549 of the Penal Code is amended to read:

549. Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from

whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

CHAPTER 844

An act to amend Section 785 of, and to add Section 10123.131 to, the Insurance Code, relating to health insurance.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 785 of the Insurance Code is amended to read:

785. (a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is age 65 years or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

(b) Conduct of an insurer, broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale of a policy or certificate previous to the purchase is relevant to any action alleging a breach of the duty of good faith and fair dealing.

(c) Except where explicitly provided to the contrary, this article shall not apply to any of the following:

(1) Medicare supplement insurance as defined in subdivision (b) of Section 10192.1.

(2) Long-term care insurance as defined in Section 10231.2.

(3) Disability coverage provided through the insured's employer or former employer.

(4) Disability insurance policies or certificates principally designed to provide coverage for accidents or expenses incurred while traveling if the premium for the policy or certificate is ten dollars ($10) or less.

(5) Blanket disability insurance as defined in Section 10270.3.

(6) Credit disability insurance as defined in Section 779.2.

(7) Accidental death insurance.

(8) Until January 1, 2002, disability policies or certificates that are sold through direct response methods of delivery.

(9) Disability income insurance as defined in subdivision (i) of Section 799.01.

(d) Provided that the requirements of Section 10296 are met, this article shall not apply to transportation ticket policies and baggage insurance policy types allowable for sale by travel agents pursuant to Section 1753.

SEC. 2. Section 10123.131 is added to the Insurance Code, to read:

10123.131. (a) An insurer shall pay a provider for duplicating all information it requests in connection with a contested claim, and for patient records, as follows:

(1) Except as provided in paragraph (2), the insurer shall pay the provider for copying twenty-five cents ($0.25) per page, or fifty cents ($0.50) per page for records that are copied from microfilm.

(2) The insurer shall pay the provider all reasonable costs, not exceeding actual costs, incurred by the provider in providing the insurer copies of X-rays, or tracings derived from electrocardiography, electroencephalography, or electromyography.

(b) No insurer subject to this section shall request information that is not reasonably necessary to determine liability for payment of a claim.

(c) The obligation of the insurer to comply with this section shall not be deemed to be waived when the insurer requires its contracting entities to pay claims for covered services.

(d) This section shall not apply to contractual arrangements between an insurer and its agent, an insurer and a provider, or a provider and its agent for the costs associated with the provision of duplication services.

CHAPTER 845

An act to add Section 1367.36 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1367.36 is added to the Health and Safety Code, to read:

1367.36. (a) A risk-based contract between a health care service plan and a physician or physician group that is issued, amended, delivered, or renewed in this state on or after January 1, 2001, shall not

include a provision that requires a physician or a physician group to assume financial risk for the acquisition costs of required immunizations for children as a condition of accepting the risk-based contract. A physician or physician group shall not be required to assume financial risk for immunizations that are not part of the current contract.

(b) Beginning January 1, 2001, with respect to immunizations for children that are not part of the current contract between a health care service plan and a physician or physician group, the health care service plan shall reimburse a physician or physician group at the lowest of the following, until the contract is renegotiated: (1) the physician's actual acquisition cost, (2) the ''average wholesale price'' as published in the Drug Topics Red Book, or (3) the lowest acquisition cost through sources made available to the physician by the health care service plan. Reimbursements shall be made within 45 days of receipt by the plan of documents from the physician demonstrating that the immunizations were performed, consistent with Section 1371 or through an alternative funding mechanism mutually agreed to by the health care service plan and the physician or physician group. The alternative funding mechanism shall be based on reimbursements consistent with this subdivision.

(c) Physicians and physician groups may assume financial risk for providing required immunizations, if the immunizations have experiential data that has been negotiated and agreed upon by the health care service plan and the physician risk-bearing organization. However, a health care service plan shall not require a physician risk-bearing organization to accept financial risk or impose additional risk on a physician risk-bearing organization in violation of subdivision (a).

(d) A health care service plan shall not include the acquisition costs associated with required immunizations for children in the capitation rate of a physician who is individually capitated.

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 846

An act to add Section 14085.56 to the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 14085.56 is added to the Welfare and Institutions Code, to read:

14085.56. (a) For the purposes of this section, ''Los Medanos site,'' means the site of the former Los Medanos Medical Center.

(b) Contra Costa County Regional Medical Center may construct or renovate, or both, at the former Los Medanos site, and the construction or renovation, or both, may be considered eligible for supplemental reimbursement under Section 14085.5, if the Los Medanos site meets both of the following conditions:

(1) The site is owned or leased, and operated, by Contra Costa County.

(2) The site is consolidated under the Contra Costa County Regional Medical Center general acute care license.

(c) Contra Costa County Regional Medical Center shall qualify to receive supplemental reimbursement for revised final plans for construction or renovation, or both, submitted to the Office of Statewide Health Planning and Development on or before November 30, 1998, for the Los Medanos site, and shall qualify for supplemental reimbursement under Section 14085.5 for the revised capital project if the revised capital project continues to meet the requirements for eligibility specified in Section 14085.5, as modified by this section.

(d) The revised final plans may provide for a capital project with one or more of the following variations from the original capital project plan submission:

(1) Total revision or reconfiguration, or a reduction in size and scope.

(2) Modifications necessary to comply with current seismic safety standards.

(3) Expansion of outpatient service facilities.

(4) Modifications to the foundation, structural frame, and building exterior shell, commonly known as the shell and core.

(e) For purposes of calculating supplemental reimbursement pursuant to Section 14085.5 for a revised capital project complying with this section, the initial Medi-Cal inpatient utilization rate shall be that which is determined at the time of submission of the revised capital project plan.

(f) For purposes of determining supplemental reimbursement under Section 14085.5 for a revised capital project complying with this section, supplemental reimbursement shall be based on actual costs of the revised capital project eligible for reimbursement under Section 14085.5. However, in no event shall the revised capital project costs be considered eligible for supplemental reimbursement for the construction or renovation, or both, of the Los Medanos site if these costs exceed eight million five hundred ten thousand dollars ($8,510,000).

(g) Supplemental reimbursement paid under this section for construction shall not duplicate any reimbursement received by the Contra Costa County Regional Medical Center for services provided at the Los Medanos site.

(h) Subject to subdivisions (g) and (h) of Section 14085.5, Contra Costa County Regional Medical Center shall receive supplemental reimbursement under this section for debt service associated with the revised capital project over the lesser of the following periods:

(1) The life of the revenue bonds.

(2) The period during which the Los Medanos site is either leased or owned by Contra Costa County.

SEC. 2. Due to the unique circumstances concerning the County of Contra Costa, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

CHAPTER 847

An act to amend Section 18993.8 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) It is the intent of the Legislature to reduce the number of unwed and teenage pregnancies in California.

(b) Preliminary evaluations of the Community Challenge Grant Program, administered by the State Department of Health Services, indicate that the program has succeeded in the development of innovative strategies, has contributed to agency collaboration, and has served over 200,000 Californians.

(c) Regular program evaluations will provide the necessary information to ensure that the Community Challenge Grant Program effectively achieves its stated outcomes.

SEC. 2. Section 18993.8 of the Welfare and Institutions Code is amended to read:

18993.8. The department shall conduct a statewide independent evaluation of the program, assessing the program's effectiveness in achieving stated outcomes as established by the department. The department shall submit its findings from the evaluation to the Legislature within six months of the completion of each grant cycle. The evaluation shall be performed only when for this purpose funds are appropriated in the annual Budget Act.

SEC. 3. This act shall become operative only if Assembly Bill 878 of the 1999–2000 Regular Session is enacted.

CHAPTER 848

An act to add Chapter 3.5 (commencing with Section 3040) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to health care liens.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Chapter 3.5 (commencing with Section 3040) is added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3.5. HEALTH CARE LIENS

3040. (a) No lien asserted by a licensee of the Department of Managed Care or the Department of Insurance, and no lien of a medical group or an independent practice association, to the extent that it asserts or enforces a lien, for the recovery of money paid or payable to or on behalf of an enrollee or insured for health care services provided under a health care service plan contract or a disability insurance policy, when the right of the licensee, medical group, or independent practice association to assert that lien is granted in a plan contract subject to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or a disability insurance policy subject to the Insurance Code, may exceed the sum of the reasonable costs actually paid by the licensee,

medical group, or independent practice association to perfect the lien and one of the following:

(1) For health care services not provided on a capitated basis, the amount actually paid by the licensee, medical group, or independent practice association pursuant to that contract or policy to any treating medical provider.

(2) For health care services provided on a capitated basis, the amount equal to 80 percent of the usual and customary charge for the same services by medical providers that provide health care services on a noncapitated basis in the geographic region in which the services were rendered.

(b) If an enrollee or insured received health care services on a capitated basis and on a noncapitated basis, and the licensee, medical group, or independent practice association that provided the health care services on the capitated basis paid for the health care services the enrollee received on the noncapitated basis, then a lien that is subject to subdivision (a) may not exceed the sum of the reasonable costs actually paid to perfect the lien, and the amounts determined pursuant to both paragraphs (1) and (2) of subdivision (a).

(c) If the enrollee or insured engaged an attorney, then the lien subject to subdivision (a) may not exceed the lesser of the following amounts:

(1) The maximum amount determined pursuant to subdivision (a) or (b), whichever is applicable.

(2) One-third of the moneys due to the enrollee or insured under any final judgment, compromise, or settlement agreement.

(d) If the enrollee or insured did not engage an attorney, then the lien subject to subdivision (a) may not exceed the lesser of the following amounts:

(1) The maximum amount determined pursuant to subdivision (a) or (b), whichever is applicable.

(2) One-half of the moneys due to the enrollee or insured under any final judgment, compromise, or settlement agreement.

(e) Where a final judgment includes a special finding by a judge, jury, or arbitrator, that the enrollee or insured was partially at fault, the lien subject to subdivision (a) or (b) shall be reduced by the same comparative fault percentage by which the enrollee or insured's recovery was reduced.

(f) A lien subject to subdivision (a) or (b) is subject to pro rata reduction, commensurate with the enrollee's or insured's reasonable attorney's fees and costs, in accordance with the common fund doctrine.

(g) This section is not applicable to any of the following:

(1) A lien made against a workers' compensation claim.

(2) A lien for Medi-Cal benefits pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) A lien for hospital services pursuant to Chapter 4 (commencing with Section 3045.1).

(h) This section does not create any lien right that does not exist at law, and does not make a lien that arises out of an employee benefit plan or fund enforceable if preempted by federal law.

(i) The provisions of this section may not be admitted into evidence nor given in any instruction in any civil action or proceeding between an enrollee or insured and a third party.

CHAPTER 849

An act to amend Section 1373.65 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1373.65 of the Health and Safety Code is amended to read:

1373.65. (a) (1) Thirty days prior to a plan terminating, for any reason, a contract with a medical group, individual practice association, or primary care provider, the plan shall provide written notice of the termination to enrollees who are at that time receiving a course of treatment from a provider of that medical group, individual practice association, or primary care provider, or are designated as having selected that medical group, individual practice association, or primary care provider for their care. The notice shall include instructions on selecting a new primary care provider.

(2) If a plan without advance notice to a primary care provider terminates the primary care provider because of his or her endangering the health and safety of patients, committing criminal or fraudulent acts, or engaging in grossly unprofessional conduct, the notice requirement of paragraph (1) is not applicable. Instead, the plan within 30 days of having terminated the primary care provider shall provide written notice of the termination to the enrollees who have selected that primary care provider.

(b) When a plan terminates a contractual arrangement with an individual provider within a medical group or individual practice

association, the plan may request that the medical group or individual practice association notify the enrollees who are patients of that provider of the termination.

(c) A plan shall disclose the reasons for the termination of a contract with a provider to the provider only when the termination occurs during the contract year.

(d) Notwithstanding subdivision (c), whenever a plan indicates that a provider's contract is being terminated for quality of care reasons, it shall state specifically what those reasons are.

(e) A plan that relies on primary care providers shall have a process in place to assure that patients who do not have a primary care provider have access to medical care, including specialists.

(f) If an enrollee has not been notified pursuant to subdivision (a) that his or her primary care provider has ceased to be affiliated with the enrollee's plan, the enrollee is not required to have the approval of a primary care provider to authorize a referral within the plan. All self-referrals within the plan shall be approved for a period of 60 days from the date of the termination of the enrollee's primary care provider or until a primary care provider is assigned or chosen, whichever is earlier.

This subdivision does not apply if the enrollee's plan utilizes a process for automatically assigning enrollees a primary care provider, or if the enrollee otherwise has direct access to a primary care provider.

A plan may not retroactively assign an enrollee to a new primary care provider to avoid financial responsibility for any enrollee self-referrals due to a failure to notify the enrollee pursuant to subdivision (a).

(g) All notifications required by this section shall be by United States mail. If the notice to the enrollee is returned as undeliverable, the plan shall make a good faith effort to notify the enrollee at the first appropriate contact with the plan.

(h) (1) For purposes of this section, ''primary care provider'' means a primary care physician, as defined in Section 14254 of the Welfare and Institutions Code, who provides care for the majority of an enrollee's health care problems, including, but not limited to, preventive services, acute and chronic conditions, and psychosocial issues.

(2) For purposes of this section, if a specialist meets the criteria of paragraph (1), he or she may be a primary care provider for an enrollee.

(i) This section is not applicable to a health care service plan contract that provides benefits to enrollees through preferred provider contracting arrangements if the plan does not require the enrollee to choose a primary care provider.

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 850

An act to amend Section 130060 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 130060 of the Health and Safety Code is amended to read:

130060. (a) After January 1, 2008, any general acute care hospital building that is determined to be a potential risk of collapse or pose significant loss of life shall only be used for nonacute care hospital purposes. A delay in this deadline may be granted by the office upon a demonstration by the owner that compliance will result in a loss of health care capacity that may not be provided by other general acute care hospitals within a reasonable proximity.

(b) (1) It is the intent of the Legislature, in enacting this subdivision, to facilitate the process of having more hospital buildings in substantial compliance with this chapter and to take nonconforming general acute care hospital inpatient buildings out of service more quickly.

(2) The functional contiguous grouping of hospital buildings of a general acute care hospital, each of which provides, as the primary source, one or more of the hospital's eight basic services as specified in subdivision (a) of Section 1250, may receive a five-year extension of the January 1, 2008, deadline specified in subdivision (a) of this section pursuant to this subdivision for both structural and nonstructural requirements. A functional contiguous grouping refers to buildings containing one or more basic hospital services that are either attached or connected in a way that is acceptable to the State Department of Health Services. These buildings may be either on the existing site or a new site.

(3) To receive the five-year extension, a single building containing all of the basic services or at least one building within the contiguous grouping of hospital buildings shall have obtained a building permit prior to 1973 and this building shall be evaluated and classified as a

nonconforming, Structural Performance Category 1 (SPC-1) building. The classification shall be submitted to and accepted by the Office of Statewide Health Planning and Development. The identified hospital building shall be exempt from the requirement in subdivision (a) until January 1, 2013, if the hospital agrees that the basic service or services that were provided in that building shall be provided, on or before January 1, 2013, as follows:

(A) Moved into an existing conforming Structural Performance Category-3 (SPC-3), Structural Performance Category-4 (SPC-4), or Structural Performance Category-5 (SPC-5) and Non-Structural Performance Category-4 (NPC-4) or Non-Structural Performance Category-5 (NPC-5) building.

(B) Relocated to a newly-built compliant SPC-5 and NPC-4 or NPC-5 building.

(C) Continued in the building if the building is retrofitted to a SPC-5 and NPC-4 or NPC-5 building.

(4) A five-year extension is also provided to a post 1973-building if the hospital owner informs the Office of Statewide Health Planning and Development that the building is classified as a SPC-1, SPC-3, or SPC-4 and will be closed to general acute care inpatient service use by January 1, 2013. The basic services in the building shall be relocated into a SPC-5 and NPC-4 or NPC-5 building by January 1, 2013.

(5) Any SPC-1 buildings, other than the building identified in paragraph (3) or (4), in the contiguous grouping of hospital buildings shall also be exempt from the requirement in subdivision (a) until January 1, 2013. However, on or before January 1, 2013, at a minimum, each of these buildings shall be retrofitted to a SPC-2 and NPC-3 building, or no longer be used for general acute care hospital inpatient services.

(c) On or before March 1, 2001, the office shall establish a schedule of interim work progress deadlines that hospitals shall be required to meet to be eligible for the extension specified in subdivision (b). To receive this extension, the hospital building or buildings shall meet the year 2002 nonstructural requirements.

(d) A hospital building that is eligible for an extension pursuant to this section shall meet the January 1, 2030, nonstructural and structural deadline requirements if the building is to be used for general acute care inpatient services after January 1, 2030.

(e) Upon compliance with this section, the hospital shall be issued a written notice of compliance by the office. The office shall send a written notice of violation to hospital owners that fail to comply with this section.

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CHAPTER 851

An act to add Section 130063 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 130063 is added to the Health and Safety Code, to read:

130063. (a) With regard to a general acute care hospital building located in Seismic Zone 3 as indicated in the 1995 edition of the California Building Standards Code, any hospital may request an exemption from Non-Structural Performance Category-3 requirements in Title 24 of the California Code of Regulations if the hospital building complies with the year 2002 nonstructural requirements.

(b) The office shall determine the maximum allowable level of earthquake ground shaking potential for purposes of this section.

(c) To qualify for an exemption under this section, a hospital shall provide a site-specific engineering geologic report that demonstrates an earthquake ground shaking potential below the maximum allowable level of earthquake ground shaking potential determined by the office pursuant to subdivision (b).

(d) (1) To demonstrate an earthquake ground shaking potential as provided in subdivision (c), a hospital shall submit a site-specific engineering geologic report to the office.

(2) The office shall forward the report received from a hospital to the Division of Mines and Geology in the Department of Conservation for purposes of a review.

(3) If, after review of the analysis, the Division of Mines and Geology concurs with the findings of the report, it shall return the report with a statement of concurrence to the office. Upon the receipt of the statement, if the ground shaking potential is below that established pursuant to subdivision (b), the office shall grant the exemption requested.

(e) A hospital building that is eligible for an exemption under this section shall meet the January 1, 2030, nonstructural requirement deadline if the building is to be used for general acute care inpatient services after January 1, 2030.

(f) A hospital requesting an exemption pursuant to this section shall pay the actual expenses incurred by the office and the Division of Mines and Geology.

(g) All regulatory submissions to the California Building Standards Commission made by the office for purposes of this section shall be

deemed to be emergency regulations and shall be adopted as emergency regulations. This emergency regulation authority shall remain in effect until January 1, 2004.

CHAPTER 852

An act to amend Section 1367.21 of the Health and Safety Code, to amend Section 10123.195 of the Insurance Code, and to amend Section 14105.26 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1367.21 of the Health and Safety Code is amended to read:

1367.21. (a) No health care service plan contract which covers prescription drug benefits shall be issued, amended, delivered, or renewed in this state if the plan limits or excludes coverage for a drug on the basis that the drug is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration (FDA), provided that all of the following conditions have been met:

(1) The drug is approved by the FDA.

(2) (A) The drug is prescribed by a participating licensed health care professional for the treatment of a life-threatening condition; or

(B) The drug is prescribed by a participating licensed health care professional for the treatment of a chronic and seriously debilitating condition, the drug is medically necessary to treat that condition, and the drug is on the plan formulary. If the drug is not on the plan formulary, the participating subscriber's request shall be considered pursuant to the process required by Section 1367.24.

(3) The drug has been recognized for treatment of that condition by one of the following:

(A) The American Medical Association Drug Evaluations.

(B) The American Hospital Formulary Service Drug Information.

(C) The United States Pharmacopoeia Dispensing Information, Volume 1, ''Drug Information for the Health Care Professional.''

(D) Two articles from major peer reviewed medical journals that present data supporting the proposed off-label use or uses as generally safe and effective unless there is clear and convincing contradictory evidence presented in a major peer reviewed medical journal.

(b) It shall be the responsibility of the participating prescriber to submit to the plan documentation supporting compliance with the requirements of subdivision (a), if requested by the plan.

(c) Any coverage required by this section shall also include medically necessary services associated with the administration of a drug, subject to the conditions of the contract.

(d) For purposes of this section, ''life-threatening'' means either or both of the following:

(1) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(2) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(e) For purposes of this section, ''chronic and seriously debilitating'' means diseases or conditions that require ongoing treatment to maintain remission or prevent deterioration and cause significant long-term morbidity.

(f) The provision of drugs and services when required by this section shall not, in itself, give rise to liability on the part of the plan.

(g) Nothing in this section shall be construed to prohibit the use of a formulary, copayment, technology assessment panel, or similar mechanism as a means for appropriately controlling the utilization of a drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the FDA.

(h) If a plan denies coverage pursuant to this section on the basis that its use is experimental or investigational, that decision is subject to review under Section 1370.4.

(i) Health care service plan contracts for the delivery of Medi-Cal services under the Waxman-Duffy Prepaid Health Plan Act (Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code) are exempt from the requirements of this section.

SEC. 2. Section 10123.195 of the Insurance Code is amended to read:

10123.195. (a) No group or individual disability insurance policy issued, delivered, or renewed in this state or certificate of group disability insurance issued, delivered, or renewed in this state pursuant to a master group policy issued, delivered, or renewed in another state that, as a provision of hospital, medical, or surgical services, directly or indirectly covers prescription drugs shall limit or exclude coverage for a drug on the basis that the drug is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration (FDA), provided that all of the following conditions have been met:

(1) The drug is approved by the FDA.

(2) (A) The drug is prescribed by a contracting licensed health care professional for the treatment of a life-threatening condition; or

(B) The drug is prescribed by a contracting licensed health care professional for the treatment of a chronic and seriously debilitating condition, the drug is medically necessary to treat that condition, and the drug is on the insurer's formulary, if any.

(3) The drug has been recognized for treatment of that condition by one of the following:

(A) The American Medical Association Drug Evaluations.

(B) The American Hospital Formulary Service Drug Information.

(C) The United States Pharmacopoeia Dispensing Information, Volume 1, ''Drug Information for the Health Care Professional.''

(D) Two articles from major peer reviewed medical journals that present data supporting the proposed off-label use or uses as generally safe and effective unless there is clear and convincing contradictory evidence presented in a major peer reviewed medical journal.

(b) It shall be the responsibility of the contracting prescriber to submit to the insurer documentation supporting compliance with the requirements of subdivision (a), if requested by the insurer.

(c) Any coverage required by this section shall also include medically necessary services associated with the administration of a drug subject to the conditions of the contract.

(d) For purposes of this section, ''life-threatening'' means either or both of the following:

(1) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(2) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(e) For purposes of this section, ''chronic and seriously debilitating'' means diseases or conditions that require ongoing treatment to maintain remission or prevent deterioration and cause significant long-term morbidity.

(f) The provision of drugs and services when required by this section shall not, in itself, give rise to liability on the part of the insurer.

(g) This section shall not apply to a policy of disability insurance that covers hospital, medical, or surgical expenses which is issued outside of California to an employer whose principal place of business is located outside of California.

(h) Nothing in this section shall be construed to prohibit the use of a formulary, copayment, technology assessment panel, or similar mechanism as a means for appropriately controlling the utilization of a drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the FDA.

(i) If an insurer denies coverage pursuant to this section on the basis that its use is experimental or investigational, that decision is subject to review under the Independent Medical Review System of Article 3.5 (commencing with Section 10169).

(j) This section is not applicable to vision-only, dental-only, Medicare or Champus supplement, disability income, long-term care, accident-only, specified disease or hospital confinement indemnity insurance.

SEC. 3. Section 14105.26 of the Welfare and Institutions Code is amended to read:

14105.26. (a) Each eligible facility, as described in paragraph 2 of subdivision (b), may, in addition to the rate of payment that the facility would otherwise receive for skilled nursing services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) (1) Projects eligible for supplemental reimbursement shall include any new capital projects for which final plans have been submitted to the appropriate review agency after January 1, 2000, and before January 1, 2003. For purposes of this section, ''capital project'' means the construction, expansion, replacement, remodeling, or renovation of an eligible facility, including buildings and fixed equipment. A ''capital project'' does not include the provision of furnishings or of equipment that is not fixed equipment.

(2) A facility shall be eligible only if the submitting entity had all of the following additional characteristics during the 1998 calendar year:

(A) Provided services to Medi-Cal beneficiaries.

(B) Was a distinct part of an acute care hospital providing skilled nursing care and supportive care to patients whose primary need is for the availability of skilled nursing care on an extended basis. For the purposes of this section, ''acute care hospital'' means the facilities defined in subdivisions (a) or (b), or both, of Section 1250 of the Health and Safety Code.

(C) Had not less than 300 licensed skilled nursing beds.

(D) Had an average skilled nursing Medi-Cal patient census of not less than 80 percent of the total skilled nursing patient days.

(E) Was owned by a county or city and county.

(c) (1) An eligible facility seeking to qualify for supplemental reimbursement shall submit documentation to the department regarding debt service on revenue bonds or other financing instruments used for financing the capital project.

(2) The department shall confirm in writing project eligibility under this section.

(d) (1) Capital projects receiving funding shall include only the upgrading or construction of buildings and equipment to a level required

by currently accepted medical practice standards, including projects designed to correct Joint Commission on Accreditation of Hospitals and Health Systems, fire and life safety, seismic, or other related regulatory standards.

(2) Capital projects receiving funding may expand service capacity as needed to maintain current or reasonably foreseeable necessary bed capacity to meet the needs of Medi-Cal beneficiaries after giving consideration to bed capacity needed for other patients, including unsponsored patients.

(3) Supplemental reimbursement shall only be made for capital projects, or for that portion of capital projects that provide skilled nursing services, and that are available and accessible to patients eligible for services under this chapter.

(e) An eligible facility's supplemental reimbursement for a capital project qualifying pursuant to this section shall be calculated and paid as follows:

(1) For any fiscal year for which the facility is eligible to receive supplemental reimbursement, the facility shall report to the department the amount of debt service on the revenue bonds or other financing instruments issued to finance the capital project.

(2) For each fiscal year in which an eligible facility requests reimbursement, the department shall establish the ratio of skilled nursing Medi-Cal days of care provided by the eligible facility to total skilled nursing patient days of care provided by the eligible facility. The ratio shall be established using data obtained from audits performed by the department, and shall be applied to the corresponding fiscal year of debt service on the revenue bonds or other financing instruments issued to finance the capital project.

(3) The amount of debt service that will be submitted to the federal Health Care Financing Administration for the purpose of claiming reimbursement for each fiscal year shall equal the amount determined annually in paragraph (1) multiplied by the percentage figure determined in paragraph (2).

(4) The supplemental reimbursement to an eligible facility shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (j).

(5) In no instance shall the total amount of supplemental reimbursement received under this section combined with that received from all other sources dedicated exclusively to debt service exceed 100 percent of the debt service for the capital project over the life of the loan, revenue bond, or other financing mechanism.

(6) A facility qualifying for and receiving supplemental reimbursement pursuant to this section shall continue to receive reimbursement until the qualifying loan, revenue bond, or other

financing mechanism is paid off, and as long as the facility meets the requirements of paragraph (3) of subdivision (d).

(7) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on skilled nursing services provided to Medi-Cal patients at the eligible facility, either on a per diem basis, a per discharge basis, or any other federally permissible basis. The department shall seek approval from the federal Health Care Financing Administration for the payment methodology to be utilized, and shall not make any payment pursuant to this section prior to obtaining that approval.

(8) The supplemental reimbursement provided by this section shall not commence prior to the date upon which the hospital submits to the department a copy of the certificate of occupancy for the capital project.

(f) (1) It is the Legislature's intent in enacting this section to provide a funding source for a portion of the construction costs of eligible facilities without any expenditure from the state General Fund.

(2) The state share of the amount of the debt service submitted to the federal Health Care Financing Administration for purposes of supplemental reimbursement shall be paid with county-only funds and certified to the state as provided in subdivision (g). Any amount of the costs of the capital project that are not reimbursed by federal funds shall be borne solely by the eligible facility.

(3) Prior to receiving any funding through this section, an eligible facility shall demonstrate its ability to cover all of the anticipated costs of construction, including those not reimbursed through federal funding.

(g) The county or city and county, on behalf of any eligible facility, shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the capital project are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data, as specified by the department, to determine the appropriate amounts to claim as expenditures qualifying for financial participation.

(4) Keep, maintain, and have readily retrievable, such records as specified by the department in order to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Health Care Financing Administration.

(h) The department may require that any county or city and county seeking supplemental reimbursement under this section enter into an interagency agreement with the department for the purpose of implementing this section.

(i) All payments received by an eligible facility pursuant to this section shall be placed in a special account, the funds of which shall be used exclusively for the payment of expenses related to the eligible capital project.

(j) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may, for federal purposes, limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for debt service that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(k) Supplemental reimbursement paid under this section shall not duplicate any reimbursement received by an eligible facility pursuant to this chapter for construction costs that would otherwise be eligible for reimbursement under this section. In no event shall the total Medi-Cal reimbursement pursuant to this chapter to a facility eligible under this section be less than what would have been paid had this section not existed.

(*l*) In the event there is a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Health Care Financing Administration that the supplemental reimbursement provided in this section must be made to any facility not described therein, this section shall become immediately inoperative.

(m) Any and all funds expended pursuant to this section shall be subject to review and audit by the department.

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 853

An act to amend Sections 84102, 84103, 84107, 84211, 84216, 84216.5, 84219, 84303, 85200, and 85201 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 84102 of the Government Code is amended to read:

84102. The statement of organization required by Section 84101 shall include:

(a) The name, street address, and telephone number, if any, of the committee. In the case of a sponsored committee, the name of the committee shall include the name of its sponsor. Whenever a committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, a term identifying that industry or group shall be included in the name of the committee.

(b) In the case of a sponsored committee, the name, street address, and telephone number of each sponsor.

(c) The full name, street address, and telephone number, if any, of the treasurer and other principal officers.

(d) The full name and office sought by any candidate and the title and ballot number, if any, of any measure, which the committee supports or opposes as its primary activity. A committee which does not support or oppose one or more candidates or ballot measures as its primary activity shall provide a brief description of its political activities, including whether it supports or opposes candidates or measures and whether such candidates or measures have common characteristics such as a political party affiliation.

(e) A statement whether the committee is independent or controlled, and if it is controlled, the name of each candidate, or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. If a committee is controlled by a candidate for partisan office, the controlled committee shall indicate the political party, if any, with which the candidate is affiliated.

(f) For a committee controlled by a candidate for his or her election, the name and address of the financial institution where the committee has established an account and the account number.

(g) Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

SEC. 2. Section 84103 of the Government Code is amended to read:

84103. (a) Whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change. The committee shall file the original of the amendment with the Secretary of State and shall also file a copy of the amendment with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

(b) In addition to filing an amendment to a statement of organization as required by subdivision (a), a committee as defined in subdivision (a) of Section 82013 shall, by facsimile transmission, online transmission, telegram, or personal delivery within 24 hours, notify the filing officer with whom it is required to file the originals of its campaign reports pursuant to Section 84215 when the change requiring the amendment occurs before the date of the election in connection with which the committee is required to file a preelection statement, but after the closing date of the last preelection statement required to be filed for the election pursuant to Section 84200.7 or 84200.8, if any of the following information is changed:

(1) The name of the committee.

(2) The name of the treasurer or other principal officers.

(3) The name of any candidate or committee by which the committee is controlled or with which it acts jointly.

The notification shall include the changed information, the date of the change, the name of the person providing the notification, and the committee's name and identification number.

A committee may file a notification online only if the appropriate filing officer is capable of receiving the notification in that manner.

SEC. 3. Section 84107 of the Government Code is amended to read:

84107. Within 30 days of the designation of the numerical order of propositions appearing on the ballot, any committee which is primarily formed to support or oppose a ballot measure, shall, if supporting the measure, include the statement, ''a committee for Proposition ____,'' or, if opposing the measure, include the statement, ''a committee against Proposition ____,'' in any reference to the committee required by law.

SEC. 4. Section 84211 of the Government Code is amended to read:

84211. Each campaign statement required by this article shall contain all of the following information:

(a) The total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received.

(b) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.

(c) The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of one hundred dollars ($100) or more.

(d) The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of less than one hundred dollars ($100).

(e) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

(f) If the cumulative amount of contributions (including loans) received from a person is one hundred dollars ($100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan.

(6) The cumulative amount of contributions.

(g) If the cumulative amount of loans received from or made to a person is one hundred dollars ($100) or more, and a loan has been received from or made to a person during the period covered by the campaign statement, or is outstanding during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The original date and amount of each loan.

(6) The due date and interest rate of the loan.

(7) The cumulative payment made or received to date at the end of the reporting period.

(8) The balance outstanding at the end of the reporting period.

(9) The cumulative amount of contributions.

(h) For each person, other than the filer, who is directly, indirectly, or contingently liable for repayment of a loan received or outstanding during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The amount of his or her maximum liability outstanding.

(i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars ($100) or more.

(j) The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than one hundred dollars ($100).

(k) For each person to whom an expenditure of one hundred dollars ($100) or more has been made during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) The amount of each expenditure.

(4) A brief description of the consideration for which each expenditure was made.

(5) In the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent expenditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.

(6) The information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for an expenditure of five hundred dollars ($500) or more during the period covered by the campaign statement.

For purposes of subdivisions (i), (j), and (k) only, the terms ''expenditure'' or ''expenditures'' mean any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

(*l*) In the case of a controlled committee, an official committee of a political party, or an organization formed or existing primarily for political purposes, the amount and source of any miscellaneous receipt.

(m) If a committee is listed pursuant to subdivision (f), (g), (h), (k), (*l*), or (q), the number assigned to the committee by the Secretary of State shall be listed, or if no number has been assigned, the full name and street address of the treasurer of the committee.

(n) In a campaign statement filed by a candidate who is a candidate in both a state primary and general election, his or her controlled committee, or a committee primarily formed to support or oppose such a candidate, the total amount of contributions received and the total amount of expenditures made for the period January 1 through June 30 and the total amount of contributions received and expenditures made for the period July 1 through December 31.

(o) The full name, residential or business address, and telephone number of the filer, or in the case of a campaign statement filed by a committee defined by subdivision (a) of Section 82013, the name, street address, and telephone number of the committee and of the committee treasurer. In the case of a committee defined by subdivision (b) or (c) of Section 82013, the name that the filer uses on campaign statements shall be the name by which the filer is identified for other legal purposes or any name by which the filer is commonly known to the public.

(p) If the campaign statement is filed by a candidate, the name, street address, and treasurer of any committee of which he or she has knowledge which has received contributions or made expenditures on behalf of his or her candidacy and whether the committee is controlled by the candidate.

(q) A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.

(r) If a committee primarily formed for the qualification or support of, or opposition to, an initiative or ballot measure is required to report an expenditure to a business entity pursuant to subdivision (k) and 50 percent or more of the business entity is owned by a candidate or person controlling the committee, by an officer or employee of the committee, or by a spouse of any of these individuals, the committee's campaign statement shall also contain, in addition to the information required by subdivision (k), that person's name, the relationship of that person to the committee, and a description of that person's ownership interest or position with the business entity.

(s) If a committee primarily formed for the qualification or support of, or opposition to, an initiative or ballot measure is required to report an expenditure to a business entity pursuant to subdivision (k), and a candidate or person controlling the committee, an officer or employee of the committee, or a spouse of any of these individuals is an officer, partner, consultant, or employee of the business entity, the committee's campaign statement shall also contain, in addition to the information required by subdivision (k), that person's name, the relationship of that person to the committee, and a description of that person's ownership interest or position with the business entity.

(t) If the campaign statement is filed by a committee, as defined in subdivision (b) or (c) of Section 82013, information sufficient to identify the nature and interests of the filer, including:

(1) If the filer is an individual, the name and address of the filer's employer, if any, or his or her principal place of business if the filer is self-employed, and a description of the business activity in which the filer or his or her employer is engaged.

(2) If the filer is a business entity, a description of the business activity in which it is engaged.

(3) If the filer is an industry, trade, or professional association, a description of the industry, trade, or profession which it represents, including a specific description of any portion or faction of the industry, trade, or profession which the association exclusively or primarily represents.

(4) If the filer is not an individual, business entity, or industry, trade, or professional association, a statement of the person's nature and purposes, including a description of any industry, trade, profession, or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

SEC. 5. Section 84216 of the Government Code is amended to read:

84216. (a) Notwithstanding Section 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.

(b) A loan, whether or not there is a written contract for the loan, shall be reported as provided in Section 84211 when any of the following apply:

(1) The loan is a contribution.

(2) The loan is received by a committee.

(3) The loan is received by a candidate and is used for political purposes.

SEC. 6. Section 84216.5 of the Government Code is amended to read:

84216.5. A loan of campaign funds, whether or not there is a written contract for the loan, made by a candidate or committee shall be reported as provided in Section 84211.

SEC. 7. Section 84219 of the Government Code is amended to read:

84219. Whenever a slate mailer organization is required to file campaign reports pursuant to Section 84218, the campaign report shall include the following information:

(a) The total amount of receipts during the period covered by the campaign statement and the total cumulative amount of receipts. For

purposes of this section only, ''receipts'' means payments received by a slate mailer organization for production and distribution of slate mailers.

(b) The total amount of disbursements made during the period covered by the campaign statement and the total cumulative amount of disbursements. For purposes of this section only, ''disbursements'' means payment made by a slate mailer organization for the production or distribution of slate mailers.

(c) For each candidate or committee that is a source of receipts totaling one hundred dollars ($100) or more during the period covered by the campaign statement:

(1) The name of the candidate or committee, identification of the jurisdiction and the office sought or ballot measure number or letter, and if the source is a committee, the committee's identification number, street address, and the name of the candidate or measure on whose behalf or in opposition to which the payment is made.

(2) The date and amount received for each receipt totaling one hundred dollars ($100) or more during the period covered by the campaign statement.

(3) The cumulative amount of receipts on behalf of or in opposition to the candidate or measure.

(d) For each person other than a candidate or committee who is a source of receipts totaling one hundred dollars ($100) or more during the period covered by the campaign statement:

(1) Identification of the jurisdiction, office or ballot measure, and name of the candidate or measure on whose behalf or in opposition to which the payment was made.

(2) Full name, street address, name of employer, or, if self-employed, name of business of the source of receipts.

(3) The date and amount received for each receipt totaling one hundred dollars ($100) or more during the period covered by the campaign statement.

(4) The cumulative amount of receipts on behalf of or in opposition to the candidate or measure.

(e) For each candidate or ballot measure not reported pursuant to subdivision (c) or (d), but who was supported or opposed in a slate mailer sent by the slate mailer organization during the period covered by the report, identification of jurisdiction, office or ballot measure, and name of the candidate or measure who was supported or opposed.

(f) The total amount of disbursements made during the period covered by the campaign statement to persons who have received one hundred dollars ($100) or more.

(g) The total amount of disbursements made during the period covered by the campaign statement to persons who have received less than one hundred dollars ($100).

(h) For each person to whom a disbursement of one hundred dollars ($100) or more has been made during the period covered by the campaign statement:

(1) His or her full name.

(2) His or her street address.

(3) The amount of each disbursement.

(4) A brief description of the consideration for which each disbursement was made.

(5) The information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for a disbursement of five hundred dollars ($500) or more during the period covered by the campaign statement.

(i) Cumulative disbursements, totaling one thousand dollars ($1,000) or more, made directly or indirectly to any person listed in the slate mailer organization's statement of organization. For purposes of this subdivision, a disbursement is made indirectly to a person if it is intended for the benefit of or use by that person or a member of the person's immediate family, or if it is made to a business entity in which the person or member of the person's immediate family is a partner, shareholder, owner, director, trustee, officer, employee, consultant, or holds any position of management or in which the person or member of the person's immediate family has an investment of one thousand dollars ($1,000) or more. This subdivision shall not apply to any disbursement made to a business entity whose securities are publicly traded.

(j) The full name, street address, and telephone number of the slate mailer organization and of the treasurer.

(k) Whenever a slate mailer organization also qualifies as a general purpose committee pursuant to Section 82027.5, the campaign report shall include, in addition to the information required by this section, the information required by Section 84211.

SEC. 8. Section 84303 of the Government Code is amended to read:

84303. No expenditure of five hundred dollars ($500) or more shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section.

SEC. 9. Section 85200 of the Government Code is amended to read:

85200. Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective state office, pursuant to Section 82024, shall file with the Secretary of State an original statement, signed under penalty of perjury, of intention to be a candidate for a specific office.

An individual who intends to be a candidate for any other elective office shall file the statement of intention with the same filing officer and in the same location as the individual would file an original campaign statement pursuant to subdivisions (c), (d), and (e) of Section 84215.

For purposes of this section, ''contribution'' and ''loan'' do not include any payments from the candidate's personal funds for a candidate filing fee or a candidate statement of qualifications fee.

SEC. 10. Section 85201 of the Government Code is amended to read:

85201. (a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial institution located in the state.

(b) As required by subdivision (f) of Section 84102, a candidate who raises contributions of one thousand dollars ($1,000) or more in a calendar year shall set forth the name and address of the financial institution where the candidate has established a campaign contribution account and the account number on the committee statement of organization filed pursuant to Sections 84101 and 84103.

(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee shall be deposited in the account.

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) All campaign expenditures shall be made from the account.

(f) Subdivisions (d) and (e) do not apply to a candidate's payment for a filing fee and statement of qualifications from his or her personal funds.

(g) This section does not apply to a candidate who will not receive contributions and who makes expenditures from personal funds of less than one thousand dollars ($1,000) in a calendar year to support his or her candidacy. For purposes of this section, a candidate's payment for a filing fee and statement of qualifications shall not be included in calculating the total expenditures made.

(h) An individual who raises contributions from others for his or her campaign, but who raises or spends less than one thousand dollars ($1,000) in a calendar year, and does not qualify as a committee under Section 82013, shall establish a campaign contribution account pursuant to subdivision (a), but is not required to file a committee statement of organization pursuant to Section 84101 or other statement of bank account information.

SEC. 11. 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 81012.6 of the Government Code.

CHAPTER 854

An act to amend Sections 18804 and 18808 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 18804 of the Revenue and Taxation Code is amended to read:

18804. (a) This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

(b) (1) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than the minimum contribution amount prescribed by paragraph (2), then this article is inoperative with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(2) For purposes of this section, ''minimum contribution amount'' means two hundred fifty thousand dollars ($250,000) for any calendar year.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 2. Section 18808 of the Revenue and Taxation Code is amended to read:

18808. (a) This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes that date.

(b) (1) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than the minimum contribution amount prescribed by paragraph (2), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is inoperative with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(2) For purposes of this section, ''minimum contribution amount'' means two hundred fifty thousand dollars ($250,000) for any calendar year.

(c) For each calendar year, beginning with calendar year 2001, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 3. Notwithstanding Section 18415 of the Revenue and Taxation Code, or any other provision of law, the amendments to Sections 18804 and 18808 of the Revenue and Taxation Code made by this act shall apply to tax returns filed in 2001 and thereafter for taxable years beginning on and after January 1, 2000.

CHAPTER 855

An act to add Section 21547.7 to the Government Code, relating to retirement.

[Approved by Governor September 28, 2000. Filed with
Secretary of State September 29, 2000.]

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

SECTION 1. Section 21547.7 is added to the Government Code, to read:

21547.7. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, upon the death of a local firefighter member while in the employ of an agency subject to this section on or after January 1, 2001, who is credited with 20 years or more of state service, the surviving spouse, or eligible children, if there is no eligible spouse, may receive a monthly allowance in lieu of the basic death benefit. The board shall notify the eligible survivor, as defined in Section 21546, of this alternate death benefit. The board shall calculate the monthly allowance that shall be payable as follows:

(1) To the member's surviving spouse, an amount equal to the amount the member would have received if he or she had retired for service at the minimum retirement age on the date of death and had elected optional settlement 2 and Section 21459. The retirement allowance shall be calculated using all service earned by the member in this system.

(2) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at the minimum retirement age on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member. The retirement allowance shall be calculated using all service earned by the member in this system.

(3) The cost of the allowance paid pursuant to this subdivision shall be paid from the assets of the employer at the member's date of death. All member contributions made by the member to this system shall be transferred to the plan assets of the employer liable for the funding of this benefit.

(b) (1) Upon the death of a local firefighter member while in the employ of an agency subject to this section on or after January 1, 2001, who is credited with 20 years or more of state service and who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, the surviving

spouse, or eligible children, if there is no eligible spouse, may elect to receive a monthly allowance that is equal to the amount that 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 in lieu of the basic death benefit. The retirement allowance will be calculated using all service earned by the member in this system.

(2) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, the allowance shall continue to the surviving children, under the age of 18 years, collectively, in amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had been retired from service on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member. The retirement allowance will be calculated using all service earned by the member in this system.

(3) The cost of the increase in service allowance paid pursuant to this subdivision shall be paid from the assets of the employer at the member's date of death.

(c) 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.

CHAPTER 856

An act to repeal and add Section 1380.1 of the Health and Safety Code, relating to health care.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1380.1 of the Health and Safety Code is repealed.

SEC. 2. Section 1380.1 is added to the Health and Safety Code, to read:

1380.1. (a) The Legislature finds and declares as follows:

(1) Multiple medical quality audits of health care providers, as many as 25 for some physician offices, increase costs for health care providers

and health plans, and thus ultimately increase costs for the purchaser and the consumer, and result in the direction of limited health care resources to administrative costs instead of to patient care.

(2) Streamlining the multiple medical quality audits required by health care service plans and insurers is vital to increasing the resources directed to patient care.

(3) Few legislative proposals affecting health care services have the potential of benefiting all of the affected parties, including health plans, health care providers, purchasers, and consumers, through a reduction in administrative costs but without negatively affecting patient care.

(b) The Advisory Committee on Managed Care shall recommend to the director standards for a uniform medical quality audit system, which shall include a single periodic medical quality audit. The director shall publish proposed regulations in that regard on or before January 1, 2002.

(c) In developing those standards, the Advisory Committee on Managed Care shall seek comment from a broad and balanced range of interested parties.

(d) The recommendations shall include all of the following:

(1) Standards that will serve as the basis of the single periodic medical quality audit necessary to meet the criteria of this section.

(2) Standards that will not be covered by the single periodic medical quality audit and that may be audited directly by health care service plans.

(3) A list of those private sector accreditation organizations, if any, that have or can develop systems comparable to the recommended system, and the capability and expertise to accredit, audit, or credential providers.

(e) (1) The director may approve private sector accreditation organizations as qualified organizations to perform the single periodic medical quality audits.

(2) Audits shall be conducted at least annually.

(f) The single medical quality audit shall not prevent licensed health care service plans from developing performance criteria or conducting separate audits for governmental or regulatory purposes, purchasers, or to address consumer complaints and grievances, management changes, or plan initiatives to improve or monitor quality.

CHAPTER 857

An act to amend Sections 1618.5, 4382, 4999, 4999.4, 4999.6, and 4999.7 of the Business and Professions Code, Sections 43.98, 56.17, and 3296 of the Civil Code, Sections 10821 and 13408.5 of the Corporations

Code, Sections 1322, 6253.4, 6254.5, 11552, 13975, 13975.2, 21661, 31696.1, and 37615.1 of the Government Code, Sections 1317.2a, 1317.6, 1341, 1341.1, 1341.2, 1341.3, 1341.6, 1341.7, 1342.3, 1342.5, 1343, 1346.5, 1347, 1357.16, 1363, 1367.25, 1367.695, 1368.02, 1368.2, 1371.4, 1373.95, 1374.30, 1374.32, 1380, 1380.1, 1383.15, 1391.5, 1396.6, 1397.5, 11758.47, 32121, 102910, 127580, and 128725 of, and to repeal Section 1398 of, the Health and Safety Code, to amend Sections 740, 742.407, 742.435, 791.02, 1068, 1068.1, 10123.35, 10123.68, 10140.1, 10169, 10169.2, 10169.3, 10169.5, 10196, 10270.98, 10704, 10733, 10734, 10810, 10820, 10856, 12693.36, 12693.365, 12693.37, and 12695.18 of the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 830.3 of the Penal Code, to amend Sections 5777, 9541, 14087.32, 14087.36, 14087.37, 14087.38, 14087.4, 14087.9705, 14088.19, 14089, 14089.4, 14139.13, 14251, 14308, 14456, 14457, 14459, 14460, 14482, and 14499.71 of the Welfare and Institutions Code, relating to health care coverage.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1618.5 of the Business and Professions Code is amended to read:

1618.5. (a) The board shall provide to the Director of the Department of Managed Health Care a copy of any accusation filed with the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when the accusation is filed, for a violation of this chapter relating to the quality of care of any dental provider of a health care service plan, as defined in Section 1345 of the Health and Safety Code. There shall be no liability on the part of, and no cause of action shall arise against, the State of California, the Board of Dental Examiners, the Department of Managed Health Care, the director of that department, or any officer, agent, employee, consultant, or contractor of the state or the board or the department for the release of any false or unauthorized information pursuant to this section, unless the release is made with knowledge and malice.

(b) The board and its executive officer and staff shall maintain the confidentiality of any nonpublic reports provided by the Director of the Department of Managed Health Care pursuant to subdivision (i) of Section 1380 of the Health and Safety Code.

SEC. 2. Section 4382 of the Business and Professions Code is amended to read:

4382. The board may audit persons for compliance with the limits established in paragraph (3) of subdivision (a) of Section 4380 except that in the case of a facility or pharmacy that predominately serves members of a prepaid group practice health care service plan, those audits may be undertaken solely by the Department of Managed Health Care pursuant to its authority to audit those plans.

SEC. 2.1. Section 4999 of the Business and Professions Code is amended to read:

4999. (a) On and after January 1, 2000, no business entity that employs, or contracts or subcontracts, directly or indirectly, with, the full-time equivalent of five or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, shall engage in the business of providing telephone medical advice services to a patient at a California address unless the business is registered with the Telephone Medical Advice Services Bureau. The department may adopt emergency regulations further defining when a health care professional's primary function is providing telephone medical advice.

(b) Any business entity required to be registered under subdivision (a) that submits proof of accreditation by the American Accreditation Healthcare Commission, URAC, the National Committee for Quality Assurance, the National Quality Health Council, or the Joint Commission on Accreditation of Healthcare Organizations shall be deemed provisionally registered by the bureau until the earlier of the following:

(1) December 31, 2000.

(2) The granting or denial of an application for registration pursuant to subdivision (a).

(c) A medical group that operates in multiple locations in California shall not be required to register pursuant to this section if no more than five full-time equivalent persons at any one location perform telephone medical advice services and those persons limit the telephone medical advice services to patients being treated at that location.

SEC. 2.2. Section 4999.4 of the Business and Professions Code is amended to read:

4999.4. (a) Every registration issued a telephone medical advice service shall expire 24 months after the initial date of issuance.

(b) To renew an unexpired registration, the registrant shall, before the time at which the license registration would otherwise expire, apply for renewal on a form prescribed by the bureau, and pay the renewal fee authorized by Section 4999.5.

(c) A registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration

of the three-year period. An expired registration may be renewed at any time within three years after its expiration upon filling of an application for renewal on a form prescribed by the bureau and the payment of all fees authorized by Section 4999.5.

SEC. 2.3. Section 4999.6 of the Business and Professions Code is amended to read:

4999.6. The department may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter. A telephone medical advice services provider who provides telephone medical advice to a significant total number of charity or medically indigent patients may, at the discretion of the director, be exempt from the fee requirements imposed by this chapter. However, those providers shall comply with all other provisions of this chapter.

SEC. 2.4. Section 4999.7 of the Business and Professions Code is amended to read:

4999.7. (a) Nothing in this section shall limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For the purposes of this chapter, ''telephone medical advice'' means a telephonic communication between a patient and a health care professional, wherein the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment.

(c) For the purposes of this chapter, ''health care professional'' is a staff person described in Section 4999.2 who provides medical advice services and is appropriately licensed, certified, or registered as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000), a dentist pursuant to Chapter 4 (commencing with Section 1600), a dental hygienist pursuant to Section 1758 et seq., a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), an optometrist pursuant to Chapter 7 (commencing with Section 3000), a chiropractor pursuant to the Chiropractic Initiative Act, or an osteopath pursuant to the Osteopathic Initiative Act, and who is operating consistent with the laws governing his or her respective scopes of practice in the state in which he or she provides telephone medical advice services.

SEC. 3. Section 43.98 of the Civil Code is amended to read:

43.98. (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any consultant on account of any communication by that consultant to the Director of the Department of Managed Health Care or any other officer, employee, agent, contractor, or consultant of the Department of Managed Health Care, when that communication is for the purpose of determining whether health care services have been or are being arranged or provided in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and any regulation adopted thereunder and the consultant does all of the following:

(1) Acts without malice.

(2) Makes a reasonable effort to obtain the facts of the matter communicated.

(3) Acts with a reasonable belief that the communication is warranted by the facts actually known to the consultant after a reasonable effort to obtain the facts.

(4) Acts pursuant to a contract entered into on or after January 1, 1998, between the Commissioner of Corporations and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after January 1, 1998, with the Commissioner of Corporations pursuant to Section 1397.6 of the Health and Safety Code.

(5) Acts pursuant to a contract entered into on or after July 1, 2000, between the Director of the Department of Managed Health Care and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after July 1, 1999, with the Director of the Department of Managed Health Care pursuant to Section 1397.6 of the Health and Safety Code.

(b) The immunities afforded by this section shall not affect the availability of any other privilege or immunity which may be afforded under this part. Nothing in this section shall be construed to alter the laws regarding the confidentiality of medical records.

SEC. 4. Section 56.17 of the Civil Code is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Health Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 5. Section 3296 of the Civil Code is amended to read:

3296. (a) Whenever a judgment for punitive damages is entered against an insurer or health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the plaintiff in the action shall, within 10 days of entry of judgment, provide all of the following to the Commissioner of the Department of Insurance or the Director of the Department of Managed Health Care, whichever commissioner has regulatory jurisdiction over the insurer or health care service plan:

(1) A copy of the judgment.

(2) A brief recitation of the facts of the case.

(3) Copies of relevant pleadings, as determined by the plaintiff.

(b) The willful failure to comply with this section may, at the discretion of the trial court, result in the imposition of sanctions against the plaintiff or his or her attorney.

(c) This section shall apply to all judgments entered on or after January 1, 1995.

(d) ''Insurer,'' for purposes of this section, means any person or entity transacting any of the classes of insurance described in Chapter 1 (commencing with Section 100) of Part 1 of Division 1 of the Insurance Code.

SEC. 6. Section 10821 of the Corporations Code is amended to read:

10821. Notwithstanding any other provision of this division, as to a health care service plan which is formed under or subject to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of this division, all references to the Attorney General contained in Part 2 or Part 3 of this division shall, in the case of health care service plans, be deemed to refer to the Director of the Department of Managed Health Care.

SEC. 7. Section 13408.5 of the Corporations Code is amended to read:

13408.5. No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Health Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

SEC. 8. Section 1322 of the Government Code is amended to read:

1322. In addition to any other statutory provisions requiring confirmation by the Senate of officers appointed by the Governor, the

appointments by the Governor of the following officers and the appointments by him or her to the listed boards and commissions are subject to confirmation by the Senate:

(1) California Horse Racing Board.
(2) Court Reporters Board of California.
(3) Chief, Division of Occupational Safety and Health.
(4) Chief, Division of Labor Standards Enforcement.
(5) Commissioner of Corporations.
(6) Contractors State License Board.
(7) Director of Fish and Game.
(8) State Director of Health Services.
(9) Chief Deputy, State Department of Health Services.
(10) Real Estate Commissioner.
(11) State Athletic Commissioner.
(12) State Board of Barbering and Cosmetology Examiners.
(13) State Librarian.
(14) Director of Social Services.
(15) Chief Deputy, State Department of Social Services.
(16) Director of Mental Health.
(17) Chief Deputy, State Department of Mental Health.
(18) Director of Developmental Services.
(19) Chief Deputy, State Department of Developmental Services.
(20) Director of Alcohol and Drug Abuse.
(21) Director of Rehabilitation.
(22) Chief Deputy, Department of Rehabilitation.
(23) Director of the Office of Statewide Health Planning and Development.
(24) Deputy, Health and Welfare Agency.
(25) Director, Department of Managed Health Care.
(26) Patient Advocate, Department of Managed Health Care.

SEC. 9. Section 6253.4 of the Government Code is amended to read:

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections

Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Department of Managed Health Care
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

SEC. 10. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure

shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, ''agency'' includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

SEC. 11. 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.
(ag) Director of the Department of Managed Health Care.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 12. Section 13975 of the Government Code is amended to read:

13975. The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corporations, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Financial Institutions, the Department of Managed Health Care, the Stephen P. Teale Consolidated Data Center; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

SEC. 13. Section 13975.2 of the Government Code is amended to read:

13975.2. (a) This section applies to every action brought in the name of the people of the State of California by the Director of the Department of Managed Health Care before, on, or after the effective date of this section, when enforcing provisions of those laws administered by the Director of the Department of Managed Health Care which authorize the Director of Managed Health Care to seek a permanent or preliminary injunction, restraining order, or writ of mandate, or the appointment of a receiver, monitor, conservator, or other designated fiduciary or officer of the court. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. The court may order that the expenses and fees of the receiver, monitor, conservator, or other designated fiduciary or officer of the court, be paid from the property held by the receiver, monitor, conservator, or other court designated fiduciary or officer, but neither the state, the Business, Transportation and Housing Agency, nor the Department of Managed Health Care shall be liable for any of those expenses and fees, unless expressly provided for by written contract.

(b) The receiver, monitor, conservator, or other designated fiduciary or officer of the court may do any of the following subject to the direction of the court:

(1) Sue for, collect, receive, and take into possession all the real and personal property derived by any unlawful means, including property with which that property or the proceeds thereof has been commingled if that property or the proceeds thereof cannot be identified in kind because of the commingling.

(2) Take possession of all books, records, and documents relating to any unlawfully obtained property and the proceeds thereof. In addition, they shall have the same right as a defendant to request, obtain, inspect, copy, and obtain copies of books, records, and documents maintained by third parties that relate to unlawfully obtained property and the proceeds thereof.

(3) Transfer, encumber, manage, control, and hold all property subject to the receivership, including the proceeds thereof, in the manner directed or ratified by the court.

(4) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof to any person who committed, aided or abetted, or participated in the commission of unlawful acts or who had knowledge that the property had been unlawfully obtained.

(5) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made with the intent to hinder or delay the recovery of that property or any interest in it by the receiver or any person from whom the property was unlawfully obtained.

(6) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof that was made within one year before the date of the entry of the receivership order if less than a reasonably equivalent value was given in exchange for the transfer, except that a bona fide transferee for value and without notice that the property had been unlawfully obtained may retain the interest transferred until the value given in exchange for the transfer is returned to the transferee.

(7) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made within 90 days before the date of the entry of the receivership order to a transferee from whom the defendant unlawfully obtained some property if (A) the receiver establishes that the avoidance of the transfer will promote a fair pro rata distribution of restitution among all people from whom defendants unlawfully obtained property and (B) the transferee cannot establish that the specific property transferred was the same property that had been unlawfully obtained from the transferee.

(8) Exercise any power authorized by statute or ordered by the court.

(c) No person with actual or constructive notice of the receivership shall interfere with the discharge of the receiver's duties.

(d) No person may file any action or enforce or create any lien, or cause to be issued, served, or levied any summons, subpoena, attachment, or writ of execution against the receiver or any property subject to the receivership without first obtaining prior court approval upon motion with notice to the receiver and the Director of the Department of Managed Health Care. Any legal procedure described in this subdivision commenced without prior court approval is void except

as to a bona fide purchaser or encumbrancer for value and without notice of the receivership. No person without notice of the receivership shall incur any liability for commencing or maintaining any legal procedure described by this subdivision.

(e) The court shall have jurisdiction of all questions arising in the receivership proceedings and may make any orders and judgments as may be required, including orders after noticed motion by the receiver to avoid transfers as provided in paragraphs (4), (5), (6), and (7) of subdivision (b).

(f) This section is cumulative to all other provisions of law.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) The recordation of a copy of the receivership order imparts constructive notice of the receivership in connection with any matter involving real property located in the county in which the receivership order is recorded.

SEC. 14. Section 21661 of the Government Code is amended to read:

21661. (a) The board shall contract with carriers offering long-term care insurance plans and enter into health care service plan contracts covering long-term care.

The long-term care insurance plans and health care service plan contracts covering long-term care shall be made available periodically during open enrollment periods determined by the board.

(b) The board shall award contracts to carriers who are qualified to provide long-term care benefits, and may develop and administer self-funded long-term care insurance plans. The board may offer one or more long-term care insurance plans or health care service plan contracts covering long-term care and may offer service or indemnity-type plans.

(c) The long-term care insurance plans and health care service plan contracts covering long-term care shall include home, community, and institutional care and shall, to the extent determined by the board, provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, if the carrier has been approved by the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) The classes of persons who shall be eligible to enroll are:

(1) Active and retired members and annuitants of the Public Employees' System, and their spouses, their parents, and their spouses' parents.

(2) Active and retired members and annuitants of any county or district subject to the County Employees Retirement Law of 1937, and their spouses, their parents, and their spouses' parents.

(3) Active and retired members and annuitants of the State Teachers' Retirement System, and their spouses, their parents, and their spouses' parents.

(4) Active employees and retirees and annuitants of any public agency that is a contracting agency under this part or Part 5 (commencing with Section 22751), and their spouses, their parents, and their spouses' parents.

(5) Active and retired members and annuitants of the Judges' Retirement System, and their spouses, their parents, and their spouses' parents.

(6) Active and retired members and annuitants of the Judges' Retirement System II, and their spouses, their parents, and their spouses' parents.

(7) Active and retired members and annuitants of the Legislators' Retirement System, and their spouses, their parents, and their spouses' parents.

(8) Members of the California Assembly and Senate and their spouse, their parents and their spouse's parents.

(9) Active and retired members and annuitants, and other classes of employees of other public employee retirement systems or public employers as the board determines may be eligible under the standards the board may prescribe, and their spouses, their parents, and their spouses' parents.

(10) Active employees and retirees and annuitants of any agency specified in paragraphs (1) through (9) who reside in the United States, its territories and possessions, or in a country in which a provider network can be established comparable in quality and effectiveness to those established in the United States.

(e) Any California public agency or retirement system may contract with the board to extend the provisions of this article to its active and retired employees and annuitants.

(f) Irrespective of paragraphs (1) through (10) of subdivision (d), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria established by the board.

(g) Irrespective of paragraphs (1) through (10) of subdivision (d), enrollment of active employees of the State of California shall be subject to Section 19867.

(h) The board shall establish eligibility criteria for enrollment, establish appropriate underwriting criteria for potential enrollees, define the scope of covered benefits, define the criteria to receive benefits, and set any other standards as needed.

(i) The full cost of enrollment in a long-term care insurance plan or in health care service plan contracts covering long-term care shall be paid by the enrollees.

(j) The long-term care insurance plans and health care service plan contracts covering long-term care shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

(k) For any self-funded long-term care plan developed by the board, the premiums shall be deposited in the Public Employees' Long-term Care Fund.

SEC. 15. Section 31696.1 of the Government Code is amended to read:

31696.1. (a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses' parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Managed Health Care shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

SEC. 16. Section 37615.1 of the Government Code is amended to read:

37615.1. Each local municipal hospital shall have and may exercise the following powers:

(a) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the municipality, and to control, dispose of, convey, and encumber the

same and create a leasehold interest in the same for the benefit of the hospital.

(b) To establish one or more trusts for the benefit of the municipal hospital, to administer any trusts declared or created for the benefit of the municipal hospital, to designate one or more trustees for trusts created by the municipality, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the municipal hospital.

(c) To employ any officers and employees, including architects and consultants, the board of trustees deems necessary to carry on properly the business of the municipal hospital.

(d) To do any and all things which an individual might do which are necessary for, and to the advantage of, a hospital and a nurses' training school, or a child-care facility for the benefit of employees of the hospital or residents of the municipality.

(e) To establish, maintain and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services and facilities, retirement programs, services and facilities, chemical dependency programs, services and facilities, or other health care programs, services and facilities and activities at any location within or without the municipality for the benefit of the hospital and the people served by the municipal hospital.

''Health facilities,'' as used in this subdivision, means those facilities defined in either Section 15432 of this code or Section 1250 of the Health and Safety Code and specifically includes freestanding chemical dependency recovery units.

(f) To do any and all other acts and things necessary to carry out this division.

(g) To acquire, maintain, and operate ambulances or ambulance services within and without the municipality.

(h) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations which are necessary for the maintenance of good physical and mental health in the communities served by the municipal hospital.

(i) To establish and operate in cooperation with its medical staff a coinsurance plan between the municipal hospital and the members of its attending medical staff.

(j) With the approval of the city council, to establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the municipal hospital.

(k) With the consent of the city council, to contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(*l*) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Health Care, at any location within or without the municipality for the benefit of residents of communities served by the hospital. However, no such activity shall be deemed to result in or constitute the giving or lending of the municipality's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage which is a health care service plan, as defined in subdivision (f) of Section 1345 of the Health and Safety Code, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, unless exempted pursuant to Section 1343 or 1349.2 of the Health and Safety Code.

A municipal hospital shall not provide health care coverage for any employee of an employer operating within the service area of the municipal hospital, unless the Legislature specifically authorizes, or has authorized the coverage.

This section shall not authorize any municipal hospital to contribute its facilities to any joint venture that could result in transfer of the facilities from city ownership.

(m) To provide health care coverage to members of the hospital's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(n) With the consent of the city council, to establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the municipal hospital.

(o) With the consent of the city council, to transfer, with or without consideration, any part of its assets to one or more nonprofit corporations to operate and maintain the assets for the benefits of the area served by the hospital. The initial members of the board of directors of the nonprofit corporation or corporations shall be approved by the city council and shall be residents of the city.

(p) Nothing in this section, including, but not limited to, subdivision (e), shall be construed to permit a municipal hospital to operate or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the municipality.

SEC. 17. Section 1317.2a of the Health and Safety Code is amended to read:

1317.2a. (a) A hospital which has a legal obligation, whether imposed by statute or by contract, to the extent of that contractual obligation, to any third-party payor, including, but not limited to, a health maintenance organization, health care service plan, nonprofit hospital service plan, insurer, or preferred provider organization, a county, or an employer to provide care for a patient under the circumstances specified in Section 1317.2 shall receive that patient to the extent required by the applicable statute or by the terms of the contract, or, when the hospital is unable to accept a patient for whom it has a legal obligation to provide care whose transfer will not create a medical hazard as specified in Section 1317.2, it shall make appropriate arrangements for the patient's care.

(b) A county hospital shall accept a patient whose transfer will not create a medical hazard as specified in Section 1317.2 and who is determined by the county to be eligible to receive health care services required under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, unless the hospital does not have appropriate bed capacity, medical personnel, or equipment required to provide care to the patient in accordance with accepted medical practice. When a county hospital is unable to accept a patient whose transfer will not create a medical hazard as specified in Section 1317.2, it shall make appropriate arrangements for the patient's care. The obligation to make appropriate arrangements as set forth in this subdivision does not mandate a level of service or payment, modify the county's obligations under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, create a cause of action, or limit a county's flexibility to manage county health systems within available resources. However, the county's flexibility shall not diminish a county's responsibilities under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code or the requirements contained in Chapter 2.5 (commencing with Section 1440).

(c) The receiving hospital shall provide personnel and equipment reasonably required in the exercise of good medical practice for the care of the transferred patient.

(d) Any third-party payor, including, but not limited to, a health maintenance organization, health care service plan, nonprofit hospital service plan, insurer, or preferred provider organization, or employer

which has a statutory or contractual obligation to provide or indemnify emergency medical services on behalf of a patient shall be liable, to the extent of the contractual obligation to the patient, for the reasonable charges of the transferring hospital and the treating physicians for the emergency services provided pursuant to this article, except that the patient shall be responsible for uncovered services, or any deductible or copayment obligation. Notwithstanding this section, the liability of a third-party payor which has contracted with health care providers for the provision of these emergency services shall be set by the terms of that contract. Notwithstanding this section, the liability of a third-party payor that is licensed by the Insurance Commissioner or the Director of the Department of Managed Health Care and has a contractual obligation to provide or indemnify emergency medical services under a contract which covers a subscriber or an enrollee shall be determined in accordance with the terms of that contract and shall remain under the sole jurisdiction of that licensing agency.

(e) A hospital which has a legal obligation to provide care for a patient as specified by subdivision (a) of Section 1317.2a to the extent of its legal obligation, imposed by statute or by contract to the extent of that contractual obligation, which does not accept transfers of, or make other appropriate arrangements for, medically stable patients in violation of this article or regulations adopted pursuant thereto shall be liable for the reasonable charges of the transferring hospital and treating physicians for providing services and care which should have been provided by the receiving hospital.

(f) Subdivisions (d) and (e) do not apply to county obligations under Section 17000 of the Welfare and Institutions Code.

(g) Nothing in this section shall be interpreted to require a hospital to make arrangements for the care of a patient for whom the hospital does not have a legal obligation to provide care.

SEC. 18. Section 1317.6 of the Health and Safety Code is amended to read:

1317.6. (a) Hospitals found by the state department to have committed or to be responsible for a violation of this article or the regulations adopted pursuant thereto shall be subject to a civil penalty by the state department in an amount not to exceed twenty-five thousand dollars ($25,000) for each hospital violation. In determining the amount of the fine for a hospital violation, the state department shall take into account all of the following:

(1) Whether the violation was knowing or unintentional.

(2) Whether the violation resulted or was reasonably likely to result in a medical hazard to the patient.

(3) The frequency or gravity of the violation.

(4) Other civil fines which have been imposed as a result of the violation under Section 1395 of Title 42 of the United States Code.

(b) Notwithstanding this section, the director shall refer any alleged violation by a hospital owned and operated by a health care service plan involving a plan member or enrollee to the Department of Managed Health Care unless the director determines the complaint is without reasonable basis. The Department of Managed Health Care shall have sole authority and responsibility to enforce this article with respect to violations involving hospitals owned and operated by health care service plans in their treatment of plan members or enrollees.

(c) Physicians and surgeons found by the board to have committed, or to be responsible for, a violation of this article or the regulations adopted pursuant thereto shall be subject to any and all penalties which the board may lawfully impose and may be subject to a civil penalty by the board in an amount not to exceed five thousand dollars ($5,000) for each violation. A civil penalty imposed under this subdivision shall not duplicate federal fines, and the board shall credit any federal fine against a civil penalty imposed under this subdivision.

(d) The board may impose fines when it finds any of the following:

(1) The violation was knowing or willful.

(2) The violation was reasonably likely to result in a medical hazard.

(3) There are repeated violations.

(e) It is the intent of the Legislature that the state department has primary responsibility for regulating the conduct of hospital emergency departments and that fines imposed under this section should not be duplicated by additional fines imposed by the federal government as a result of the conduct which constituted a violation of this section. To effectuate the Legislature's intent, the Governor shall inform the Secretary of the federal Department of Health and Human Services of the enactment of this section and request the federal department to credit any penalty assessed under this section against any subsequent civil monetary penalty assessed pursuant to Section 1395dd of Title 42 of the United States Code for the same violation.

(f) There shall be a cumulative maximum limit of thirty thousand dollars ($30,000) in fines assessed against hospitals under this article and under Section 1395dd of Title 42 of the United States Code for the same circumstances. To effectuate this cumulative maximum limit, the state department shall do both of the following:

(1) As to state fines assessed prior to the final conclusion, including judicial review, if available, of an action against a hospital by the federal Department of Health and Human Services under Section 1395dd of Title 42 of the United States Code (for the same circumstances finally deemed to have been a violation of this article or the regulations adopted hereunder, because of the state department action authorized by this

article), remit and return to the hospital within 30 days after conclusion of the federal action, that portion of the state fine necessary to assure that the cumulative maximum limit is not exceeded.

(2) Immediately credit against state fines assessed after the final conclusion, including judicial review, if available, of an action against a hospital by the federal Department of Health and Human Services under Section 1395dd of Title 42 of the United States Code, which results in a fine against a hospital (for the same circumstances finally deemed to have been a violation of this article or the regulations adopted hereunder, because of the state department action authorized by this article), the amount of the federal fine, necessary to assure the cumulative maximum limit is not exceeded.

(g) Any hospital found by the state department pursuant to procedures established by the state department to have committed a violation of this article or the regulations adopted hereunder may have its emergency medical service permit revoked or suspended by the state department.

(h) Any administrative or medical personnel who knowingly and intentionally violates any provision of this article, may be charged by the local district attorney with a misdemeanor.

(i) Notification of each violation found by the state department of the provisions of this article or the regulations adopted hereunder shall be sent by the state department to the Joint Commission for the Accreditation of Hospitals, the state emergency medical services authority, and local emergency medical services agencies.

(j) Any person who suffers personal harm and any medical facility which suffers a financial loss as a result of a violation of this article or the regulations adopted hereunder may recover, in a civil action against the transferring or receiving hospital, damages, reasonable attorney's fees, and other appropriate relief. Transferring and receiving hospitals from which inappropriate transfers of persons are made or refused in violation of this article and the regulations adopted hereunder shall be liable for the reasonable charges of the receiving or transferring hospital for providing the services and care which should have been provided. Any person potentially harmed by a violation of this article or the regulations adopted hereunder, or the local district attorney or the Attorney General, may bring a civil action against the responsible hospital or administrative or medical personnel, to enjoin the violation, and if the injunction issues, the court shall award reasonable attorney's fees. The provisions of this subdivision are in addition to other civil remedies and do not limit the availability of the other remedies.

(k) The civil remedies established by this section do not apply to violations of any requirements established by any county or county agency.

SEC. 19. Section 1341 of the Health and Safety Code is amended to read:

1341. (a) There is in state government, in the Business, Transportation and Housing Agency, a Department of Managed Health Care that has charge of the execution of the laws of this state relating to health care service plans and the health care service plan business including, but not limited to, those laws directing the department to ensure that health care service plans provide enrollees with access to quality health care services and protect and promote the interests of enrollees.

(b) The chief officer of the Department of Managed Health Care is the Director of the Department of Managed Health Care. The director shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The director shall receive an annual salary as fixed in the Government Code. Within 15 days from the time of the director's appointment, the director shall take and subscribe to the constitutional oath of office and file it in the office of the Secretary of State.

(c) The director shall be responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The director has and may exercise all powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in subdivision (a).

SEC. 20. Section 1341.1 of the Health and Safety Code is amended to read:

1341.1. The director shall have his or her principal office in the City of Sacramento, and may establish branch offices in the City and County of San Francisco, in the City of Los Angeles, and in the City of San Diego. The director shall from time to time obtain the necessary furniture, stationery, fuel, light, and other proper conveniences for the transaction of the business of the Department of Managed Health Care.

SEC. 21. Section 1341.2 of the Health and Safety Code is amended to read:

1341.2. In accordance with the laws governing the state civil service, the director shall employ and, with the approval of the Department of Finance, fix the compensation of such personnel as the director needs to discharge properly the duties imposed upon the director by law, including, but not limited to, a chief deputy, a public information officer, a chief enforcement counsel, and legal counsel to act as the attorney for the director in actions or proceedings brought by or against the director under or pursuant to any provision of any law under the director's jurisdiction, or in which the director joins or intervenes as to a matter within the director's jurisdiction, as a friend of the court or otherwise, and stenographic reporters to take and transcribe the

testimony in any formal hearing or investigation before the director or before a person authorized by the director. The personnel of the Department of Managed Health Care shall perform such duties as the director assigns to them. Such employees as the director designates by rule or order shall, within 15 days after their appointments, take and subscribe to the constitutional oath of office and file it in the office of the Secretary of State.

SEC. 22. Section 1341.3 of the Health and Safety Code is amended to read:

1341.3. The director shall adopt a seal bearing the inscription: ''Director, Department of Managed Health Care, State of California.'' The seal shall be affixed to or imprinted on all orders and certificates issued by him or her and such other instruments as he or she directs. All courts shall take judicial notice of this seal.

SEC. 23. Section 1341.6 of the Health and Safety Code is amended to read:

1341.6. (a) The Attorney General shall render to the director opinions upon all questions of law, relating to the construction or interpretation of any law under the director's jurisdiction or arising in the administration thereof, that may be submitted to the Attorney General by the director and upon the director's request shall act as the attorney for the director in actions and proceedings brought by or against the director under or pursuant to any provision of any law under the director's jurisdiction.

(b) Sections 11041, 11042, and 11043 of the Government Code do not apply to the Director of the Department of Managed Health Care.

SEC. 24. Section 1341.7 of the Health and Safety Code is amended to read:

1341.7. (a) Neither the director nor any of the director's assistants, clerks, or deputies shall be interested as a director, officer, shareholder, member other than a member of an organization formed for religious purposes, partner, agent, or employee of any person who, during the period of the official's or employee's association with the Department of Managed Health Care, was licensed or applied for a license as a health care service plan under this chapter.

(b) Nothing contained in subdivision (a) shall prohibit the holdings or purchasing of any securities by the director, an assistant, clerk, or deputy in accordance with rules which shall be adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(c) Nothing in this section shall prohibit or preclude the director or any of the director's assistants, clerks, or deputies or any employee of the Department of Managed Health Care from obtaining health care services as a subscriber or an enrollee from a plan licensed under this

chapter, subject to any rules that may be adopted hereunder or pursuant to proper authority.

SEC. 25. Section 1342.3 of the Health and Safety Code is amended to read:

1342.3. The director shall, in conjunction with the Advisory Committee on Managed Health Care, undertake a study to consider the feasibility and benefit of consolidating into the Department of Managed Health Care the regulation of other health insurers providing insurance through indemnity, preferred provider organization, and exclusive provider organization products, as well as through other managed care products regulated by the Department of Insurance. The results of the study along with the recommendations of the director shall be incorporated into a report to the Governor and the Legislature no later than December 31, 2001.

SEC. 26. Section 1342.5 of the Health and Safety Code is amended to read:

1342.5. The director shall consult with the Insurance Commissioner prior to adopting any regulations applicable to health care service plans subject to this chapter and nonprofit hospital service plans subject to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code and other entities governed by the Insurance Code for the specific purpose of ensuring, to the extent practical, that there is consistency of regulations applicable to these plans and entities by the Insurance Commissioner and the Director of the Department of Managed Health Care.

SEC. 27. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) This chapter shall apply to health care service plans and specialized health care service plan contracts as defined in subdivisions (f) and (o) of Section 1345.

(b) The director may by the adoption of rules or the issuance of orders deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.

(c) The director, upon request of the Director of Health Services, shall exempt from this chapter any county-operated pilot program contracting with the State Department of Health Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The director may exempt non-county-operated pilot programs upon request of the State Director

of Health Services. Those exemptions may be subject to conditions the Director of Health Services deems appropriate.

(d) Upon the request of the Director of Mental Health, the director may exempt from this chapter any mental health plan contractor or any capitated rate contract under Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code. Those exemptions may be subject to conditions the Director of Mental Health deems appropriate.

(e) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A nonprofit corporation formed under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) A person who does all of the following:

(A) Promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(C) Has obtained a certificate of authority from the State Department of Social Services.

(5) The Major Risk Medical Insurance Board when engaging in activities under Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(6) The California Small Group Reinsurance Fund.

SEC. 28. Section 1346.5 of the Health and Safety Code is amended to read:

1346.5. If the director determines that an entity purporting to be a health care service plan exempt from the provisions of Section 740 of the Insurance Code is not a health care service plan, the director shall inform the Department of Insurance of that finding. However, if the director determines that an entity is a health care service plan, the director shall prepare and maintain for public inspection a list of those persons or entities described in subdivision (a) of Section 740 of the Insurance

Code, which are not subject to the jurisdiction of another agency of this or another state or the federal government and which the director knows to be operating in the state. There shall be no liability of any kind on the part of the state, the director, and employees of the Department of Managed Health Care for the accuracy of the list or for any comments made with respect to it. Additionally, any solicitor or solicitor firm who advertises or solicits health care service plan coverage in this state described in subdivision (a) of Section 740 of the Insurance Code, which is provided by any person or entity described in subdivision (c) of that section, and where such coverage does not meet all pertinent requirements specified in the Insurance Code, and which is not provided or completely underwritten, insured or otherwise fully covered by a health care service plan, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, all financial and operational information relative to the content and scope of the plan and, specifically, as to the lack of plan coverage.

SEC. 29. Section 1347 of the Health and Safety Code is amended to read:

1347. (a) (1) There is established in the Department of Managed Health Care the Advisory Committee on Managed Health Care consisting of 22 members, as follows:

(A) The director.

(B) Eleven members appointed by the Governor, to be appointed as follows:

(i) A physician and surgeon with five years' experience in providing services to enrollees of a full service health care service plan.

(ii) An executive officer or medical director of a full service health care service plan.

(iii) A person with expertise and five years' experience in an administrative capacity of a health care service plan.

(iv) An executive officer with five years' experience with a contracting medical group.

(v) A medical director with a contracting medical group.

(vi) A member of the department's Financial Solvency Standards Board.

(vii) A physician-executive from an academic medical center.

(viii) A member of the department's clinical advisory panel.

(ix) A medical director or senior officer with a dental service plan.

(x) A medical director or senior officer with a vision service plan.

(xi) A medical director or senior officer with a mental health service plan.

(C) (i) Ten public members, four of whom shall be appointed by the Governor and three each by the Speaker of the Assembly and the Senate

Committee on Rules who have a broad understanding of health and managed care issues and who have no financial interest in the delivery of health care services or in plans except that public members may be enrollees in a health care service plan or specialized health care service plan.

(ii) Of the public members appointed by the Governor, at least two of these members shall have significant academic backgrounds in the area.

(iii) Of the members appointed by the Speaker of the Assembly and the Senate Committee on Rules at least one public member appointed by each appointing power shall represent a health care consumer advocacy organization, with the Speaker's appointee representing an organization that devotes at least 50 percent of its time to resolving consumer complaints. The Speaker of the Assembly and the Senate Committee on Rules shall also each appoint one public member with significant background experience in the area of health care.

(D) With respect to members appointed by the Governor, if members with the qualifications specified in this subdivision are not available for service, other factors such as relevant health care experience and education shall be substituted at the discretion of the Governor.

(2) Except as otherwise specified in this paragraph, all appointments to the committee shall be for a period of three years. The initial appointments shall commence January 1, 2000. Of the initial appointments made by the Governor, four shall serve for a term of one year and five shall serve for a term of two years, as designated by the Governor. Of the initial appointments made by the Speaker of the Assembly and the Senate Committee on Rules, one member appointed by each appointing power shall serve for a term of one year, and one shall serve for a term of two years, as designated by the appointing power.

(b) The committee shall meet at least quarterly and at the call of the chairperson. The director or the director's designee shall be chairperson of the committee. The committee may establish its own rules and procedures. All members shall serve without compensation, but the consumer representatives and public members shall be reimbursed from department funds for expenses actually and necessarily incurred by them in the performance of their duties.

(c) The purpose of the committee is to assist and advise the director in the implementation of the director's duties under this chapter and to make recommendations that it deems beneficial and appropriate as to how the department may best serve the people of the state. The committee shall produce an Internet-accessible annual public report that will, at a minimum, contain recommendations made to the director. At a minimum, the report shall include the following:

(1) Recommendations to the director on producing a report card to the public on the comparative performance of the managed care

organizations overseen by the department, including health care service plans and subcontracting providers, building on the work of the private sector and other government entities and including complaint information received by the state.

(2) (A) The committee's top five recommendations for improving the health care delivery system and quality of care taking into consideration information received from the public.

(B) To assist the committee in formulating its recommendations, the views and suggestions of the public should be solicited. The committee shall accompany the director at least twice each year for public hearings (with at least one in northern California and at least one in southern California).

(C) This report shall be delivered to the director, the Governor, and to the appropriate policy committees of the Legislature.

(d) The director shall consult with the advisory committee on regulations and the recommendations of the committee shall be made a part of the record with regard to such regulations. The committee shall be given at least 40 days to review and comment on regulations prior to setting a notice of hearing for proposed regulations. Nothing in this subdivision prohibits the director from promulgating emergency regulations pursuant to the provisions of the Administrative Procedure Act. The director shall discuss budget changes relating to the administration of this chapter with the committee, and the committee may make recommendations to the director regarding the proposed budget changes.

SEC. 30. Section 1357.16 of the Health and Safety Code is amended to read:

1357.16. (a) Health care service plans may enter into contractual agreements with qualified associations, as defined in subdivision (b), under which these qualified associations may assume responsibility for performing specific administrative services, as defined in this section, for qualified association members. Health care service plans that enter into agreements with qualified associations for assumption of administrative services shall establish uniform definitions for the administrative services that may be provided by a qualified association or its third-party administrator. The health care service plan shall permit all qualified associations to assume one or more of these functions when the health care service plan determines the qualified association demonstrates the administrative capacity to assume these functions.

For the purposes of this section, administrative services provided by qualified associations or their third-party administrators shall be services pertaining to eligibility determination, enrollment, premium collection, sales, or claims administration on a per-claim basis that would otherwise be provided directly by the health care service plan or

through a third-party administrator on a commission basis or an agent or solicitor work force on a commission basis.

Each health care service plan that enters into an agreement with any qualified association for the provision of administrative services shall offer all qualified associations with which it contracts the same premium discounts for performing those services the health care service plan has permitted the qualified association or its third-party administrator to assume. The health care service plan shall apply these uniform discounts to the health care service plan's risk adjusted employee risk rates after the health plan has determined the qualified association's risk adjusted employee risk rates pursuant to Section 1357.12. The health care service plan shall report to the Department of Managed Health Care its schedule of discount for each administrative service.

In no instance may a health care service plan provide discounts to qualified associations that are in any way intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association. In addition to any other remedies available to the director to enforce this chapter, the director may declare a contract between a health care service plan and a qualified association for administrative services pursuant to this section null and void if the director determines any discounts provided to the qualified association are intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association.

(b) For the purposes of this section, a qualified association is a nonprofit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, that conforms to all of the following requirements:

(1) It accepts for membership any individual or small employer meeting its membership criteria.

(2) It does not condition membership directly or indirectly on the health or claims history of any person.

(3) It uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association.

(4) It is organized and maintained in good faith for purposes unrelated to insurance.

(5) It existed on January 1, 1972, and has been in continuous existence since that date.

(6) It has a constitution and bylaws or other analogous governing documents that provide for election of the governing board of the association by its members.

(7) It offered, marketed, or sold health coverage to its members for 20 continuous years prior to January 1, 1993.

(8) It agrees to offer only to association members any plan contract.

(9) It agrees to include any member choosing to enroll in the plan contract offered by the association, provided that the member agrees to make required premium payments.

(10) It complies with all provisions of this article.

(11) It had at least 10,000 enrollees covered by association sponsored plans immediately prior to enactment of Chapter 1128 of the Statutes of 1992.

(12) It applies any administrative cost at an equal rate to all members purchasing coverage through the qualified association.

(c) A qualified association shall comply with Section 1357.52.

(d) The department shall monitor compliance with this section and report the impact of any noncompliance to the Assembly Insurance Committee and the Senate Insurance Committee on January 1, 2002.

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

SEC. 31. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The director shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the director may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The director may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the director from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the director, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. The first page of the disclosure form shall contain a notice that conforms with all of the following conditions:

(A) (i) States that the evidence of coverage discloses the terms and conditions of coverage.

(ii) States, with respect to individual plan contracts, small group plan contracts, and any other group plan contracts for which health care services are not negotiated, that the applicant has a right to view the evidence of coverage prior to enrollment, and, if the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment.

(B) Includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that individuals with special health care needs should read carefully those sections that apply to them.

(C) Includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form.

(D) For individual contracts, and small group plan contracts as defined in Article 3.1 (commencing with Section 1357), the disclosure form shall state where the health plan benefits and coverage matrix is located.

(E) Is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability that is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize, modify, or deny health care services under the benefits provided by the plan, pursuant to Sections 1363.5 and 1367.01.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(15) A description as to how an enrollee may request continuity of care as required by Section 1373.96 and request a second opinion pursuant to Section 1383.15.

(16) Information concerning the right of an enrollee to request an independent review in accordance with Article 5.55 (commencing with Section 1374.30).

(17) A notice as required by Section 1364.5.

(b) (1) As of July 1, 1999, the director shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform health plan benefits and coverage matrix containing the plan's major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following category descriptions together with the corresponding copayments and limitations in the following sequence:

(A) Deductibles.
(B) Lifetime maximums.
(C) Professional services.
(D) Outpatient services.
(E) Hospitalization services.
(F) Emergency health coverage.
(G) Ambulance services.
(H) Prescription drug coverage.
(I) Durable medical equipment.
(J) Mental health services.
(K) Chemical dependency services.
(L) Home health services.
(M) Other.

(2) The following statement shall be placed at the top of the matrix in all capital letters in at least 10-point boldface type:

THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT

SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

(c) Nothing in this section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

(d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the director pursuant to this section for each plan so examined or sold.

(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(f) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. If the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all applicants, upon request, prior to enrollment and to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract that may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

SEC. 32. Section 1367.25 of the Health and Safety Code is amended to read:

1367.25. (a) Every group health care service plan contract, except for a specialized health care service plan contract, that is issued,

amended, renewed, or delivered on or after January 1, 2000, and every individual health care service plan contract that is amended, renewed, or delivered on or after January 1, 2000, except for a specialized health care service plan contract, shall provide coverage for the following, under general terms and conditions applicable to all benefits:

(1) A health care service plan contract that provides coverage for outpatient prescription drug benefits shall include coverage for a variety of federal Food and Drug Administration approved prescription contraceptive methods designated by the plan. In the event the patient's participating provider, acting within his or her scope of practice, determines that none of the methods designated by the plan is medically appropriate for the patient's medical or personal history, the plan shall also provide coverage for another federal Food and Drug Administration approved, medically appropriate prescription contraceptive method prescribed by the patient's provider.

(2) Outpatient prescription benefits for an enrollee shall be the same for an enrollee's covered spouse and covered nonspouse dependents.

(b) Notwithstanding any other provision of this section, a religious employer may request a health care service plan contract without coverage for federal Food and Drug Administration approved contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, a health care service plan contract shall be provided without coverage for contraceptive methods.

(1) For purposes of this section, a ''religious employer'' is an entity for which each of the following is true:

(A) The inculcation of religious values is the purpose of the entity.

(B) The entity primarily employs persons who share the religious tenets of the entity.

(C) The entity serves primarily persons who share the religious tenets of the entity.

(D) The entity is a nonprofit organization as described in Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

(2) Every religious employer that invokes the exemption provided under this section shall provide written notice to prospective enrollees prior to enrollment with the plan, listing the contraceptive health care services the employer refuses to cover for religious reasons.

(c) Nothing in this section shall be construed to exclude coverage for prescription contraceptive supplies ordered by a health care provider with prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception that is necessary to preserve the life or health of an enrollee.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit provided under law or by contract.

(e) Nothing in this section shall be construed to require an individual or group health care service plan to cover experimental or investigational treatments.

SEC. 33. Section 1367.695 of the Health and Safety Code is amended to read:

1367.695. (a) The Legislature finds and declares that the unique, private, and personal relationship between women patients and their obstetricians and gynecologists warrants direct access to obstetrical and gynecological physician services.

(b) Commencing January 1, 1999, every health care service plan contract issued, amended, renewed, or delivered in this state, except a specialized health care service plan, shall allow an enrollee the option to seek obstetrical and gynecological physician services directly from a participating obstetrician and gynecologist or directly from a participating family practice physician and surgeon designated by the plan as providing obstetrical and gynecological services.

(c) In implementing this section, a health care service plan may establish reasonable provisions governing utilization protocols and the use of obstetricians and gynecologists, or family practice physicians and surgeons, as provided for in subdivision (b), participating in the plan network, medical group, or independent practice association, provided that these provisions shall be consistent with the intent of this section and shall be those customarily applied to other physicians and surgeons, such as primary care physicians and surgeons, to whom the enrollee has direct access, and shall not be more restrictive for the provision of obstetrical and gynecological physician services. An enrollee shall not be required to obtain prior approval from another physician, another provider, or the health care service plan prior to obtaining direct access to obstetrical and gynecological physician services, but the plan may establish reasonable requirements for the participating obstetrician and gynecologist or family practice physician and surgeon, as provided for in subdivision (b), to communicate with the enrollee's primary care physician and surgeon regarding the enrollee's condition, treatment, and any need for followup care.

(d) This section shall not be construed to diminish the provisions of Section 1367.69.

(e) The Department of Managed Health Care shall report to the Legislature, on or before January 1, 2000, on the implementation of this section.

SEC. 34. Section 1368.02 of the Health and Safety Code is amended to read:

1368.02. (a) The director shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the director.

(b) Every health care service plan shall publish the department's toll-free telephone number, the California Relay Service's toll-free telephone numbers for the hearing and speech impaired, the plan's telephone number, and the department's Internet address, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan, including any written communications to an enrollee that offer the enrollee the opportunity to participate in the grievance process of the plan and on all written responses to grievances. The department's telephone number, the California Relay Service's telephone numbers, the plan's telephone number, and the department's Internet address shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

''The California Department of Managed Health Care is responsible for regulating health care service plans. The department has a toll-free telephone number (insert telephone number) to receive complaints regarding health plans. The hearing and speech impaired may use the California Relay Service's toll-free telephone numbers (1-800-735-2929 (TTY) or 1-888-877-5378 (TTY)) to contact the department. The department's Internet website (insert website address) has complaint forms and instructions online. If you have a grievance against your health plan, you should first telephone your plan at [plan's telephone number] and use the plan's grievance process before contacting the department. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. The plan's grievance process and the department's complaint review process are in addition to any other dispute resolution procedures that may be available to you, and your failure to use these processes does not preclude your use of any other remedy provided by law.''

(c) (1) There is within the department an Office of Patient Advocate, which shall be known and may be cited as the Gallegos-Rosenthal Patient Advocate Program, to represent the interests of enrollees served by health care service plans regulated by the department. The goal of the office shall be to help enrollees secure health care services to which they are entitled under the laws administered by the department.

(2) The office shall be headed by a patient advocate recommended to the Governor by the Secretary of the Business, Transportation and Housing Agency. The patient advocate shall be appointed by and serve at the pleasure of the Governor.

(3) The duties of the office shall be determined by the secretary, in consultation with the director, and shall include, but not be limited to:

(A) Developing educational and informational guides for consumers describing enrollee rights and responsibilities, and informing enrollees on effective ways to exercise their rights to secure health care services. The guides shall be easy to read and understand, available in English and other languages, and shall be made available to the public by the department, including access on the department's Internet website and through public outreach and educational programs.

(B) Compiling an annual publication, to be made available on the department's Internet website, of a quality of care report card including but not limited to health care service plans.

(C) Rendering advice and assistance to enrollees regarding procedures, rights, and responsibilities related to the use of health care service plan grievance systems, the department's system for reviewing unresolved grievances, and the independent review process.

(D) Making referrals within the department regarding studies, investigations, audits, or enforcement that may be appropriate to protect the interests of enrollees.

(E) Coordinating and working with other government and nongovernment patient assistance programs and health care ombudsprograms.

(4) The director, in consultation with the patient advocate, shall provide for the assignment of personnel to the office. The department may employ or contract with experts when necessary to carry out functions of the office. The annual budget for the office shall be separately identified in the annual budget request of the department.

(5) The office shall have access to department records including, but not limited to, information related to health care service plan audits, surveys, and enrollee grievances. The department shall assist the office in compelling the production and disclosure of any information the office deems necessary to perform its duties, from entities regulated by the department, if the information is determined by the department's legal counsel to be subject, under existing law, to production or disclosure to the department.

(6) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.

SEC. 35. Section 1368.2 of the Health and Safety Code is amended to read:

1368.2. (a) On and after January 1, 2002, every group health care service plan contract, except a specialized health care service plan

contract, which is issued, amended, or renewed, shall include a provision for hospice care.

(b) The hospice care shall at a minimum be equivalent to hospice care provided by the federal Medicare program pursuant to Title XVIII of the Social Security Act.

(c) The following are applicable to this section and to paragraph (7) of subdivision (b) of Section 1345:

(1) The definitions in Section 1746.

(2) The ''federal regulations'' which means the regulations adopted for hospice care under Title XVIII of the Social Security Act in Title 42 of the Code of Federal Regulations, Chapter IV, Part 418, except Subparts A, B, G, and H, and any amendments or successor provisions thereto.

(d) The director no later than January 1, 2001, shall adopt regulations to implement this section. The regulations shall meet all of the following requirements:

(1) Be consistent with all material elements of the federal regulations that are not by their terms applicable only to eligible Medicare beneficiaries. If there is a conflict between a federal regulation and any state regulation, other than those adopted pursuant to this section, the director shall adopt the regulation that is most favorable for plan subscribers, members or enrollees to receive hospice care.

(2) Be consistent with any other applicable federal or state laws.

(3) Be consistent with the definitions of Section 1746.

(e) This section is not applicable to the subscribers, members, or enrollees of a health care service plan who elect to receive hospice care under the Medicare program.

(f) The director, commencing on January 15, 2002, and on each January 15th thereafter, shall report to the Advisory Committee on Managed Health Care any changes in the federal regulations that differ materially from the regulations then in effect for this section. The director shall include with the report written text for proposed changes to the regulations then in effect for this section needed to meet the requirements of subdivision (d).

SEC. 36. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a

prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Managed Health Care shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency

medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Managed Health Care shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction of this section.

SEC. 37. Section 1373.95 of the Health and Safety Code is amended to read:

1373.95. (a) On or before July 1, 1996, every health care service plan that provides coverage on a group basis shall file with the Department of Managed Health Care, a written policy describing how the health plan shall facilitate the continuity of care for new enrollees receiving services during a current episode of care for an acute condition from a nonparticipating provider. This written policy shall describe the process used to facilitate the continuity of care, including the assumption of care by a participating provider. Notice of the policy and information regarding how enrollees may request a review under the policy shall be provided to all new enrollees, except those enrollees who are not eligible as described in subdivision (e). A copy of the written policy shall be provided to eligible enrollees upon request.

(b) The written policy shall describe how requests to continue services with an existing provider are reviewed by the plan. The policy shall ensure that reasonable consideration is given to the potential clinical effect that a change of provider would have on the enrollee's treatment for the acute condition.

(c) A health care service plan may require any nonparticipating provider whose services are continued pursuant to the written policy to agree in writing to meet the same contractual terms and conditions that are imposed upon the plan's participating providers, including location within the plan's service area, reimbursement methodologies, and rates of payment. If the health care service plan determines that a patient's health care treatment should temporarily continue with the patient's existing provider, the health care service plan shall not be liable for actions resulting solely from the negligence, malpractice, or other tortious or wrongful acts arising out of the provision of services by the existing provider.

(d) Nothing in this section shall require a health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(e) The written policy shall not apply to any enrollee who is offered an out-of-network option, or who had the option to continue with his or her previous health plan or provider and instead voluntarily chose to change health plans.

(f) This section shall not apply to health plan contracts that include out-of-network coverage under which the enrollee is able to obtain services from the enrollee's existing provider.

(g) For purposes of this section, ''provider'' refers to a person who is described in subdivision (f) of Section 900 of the Business and Professions Code.

SEC. 38. Section 1374.30 of the Health and Safety Code is amended to read:

1374.30. (a) Commencing January 1, 2001, there is hereby established in the department the Independent Medical Review System.

(b) For the purposes of this chapter, ''disputed health care service'' means any health care service eligible for coverage and payment under a health care service plan contract that has been denied, modified, or delayed by a decision of the plan, or by one of its contracting providers, in whole or in part due to a finding that the service is not medically necessary. A decision regarding a disputed health care service relates to the practice of medicine and is not a coverage decision. A disputed health care service does not include services provided by a specialized health care service plan, except to the extent that the service (1) involves the practice of medicine, or (2) is provided pursuant to a contract with a health care service plan that covers hospital, medical, or surgical benefits. If a plan, or one of its contracting providers, issues a decision denying, modifying, or delaying health care services, based in whole or in part on a finding that the proposed health care services are not a covered benefit under the contract that applies to the enrollee, the statement of decision shall clearly specify the provision in the contract that excludes that coverage.

(c) For the purposes of this chapter, ''coverage decision'' means the approval or denial of health care services by a plan, or by one of its contracting entities, substantially based on a finding that the provision of a particular service is included or excluded as a covered benefit under the terms and conditions of the health care service plan contract. A ''coverage decision'' does not encompass a plan or contracting provider decision regarding a disputed health care service.

(d) (1) All enrollee grievances involving a disputed health care service are eligible for review under the Independent Medical Review System if the requirements of this article are met. If the department finds that an enrollee grievance involving a disputed health care service does not meet the requirements of this article for review under the Independent Medical Review System, the enrollee request for review

shall be treated as a request for the department to review the grievance pursuant to subdivision (b) of Section 1368. All other enrollee grievances, including grievances involving coverage decisions, remain eligible for review by the department pursuant to subdivision (b) of Section 1368.

(2) In any case in which an enrollee or provider asserts that a decision to deny, modify, or delay health care services was based, in whole or in part, on consideration of medical necessity, the department shall have the final authority to determine whether the grievance is more properly resolved pursuant to an independent medical review as provided under this article or pursuant to subdivision (b) of Section 1368.

(3) The department shall be the final arbiter when there is a question as to whether an enrollee grievance is a disputed health care service or a coverage decision. The department shall establish a process to complete an initial screening of an enrollee grievance. If there appears to be any medical necessity issue, the grievance shall be resolved pursuant to an independent medical review as provided under this article or pursuant to subdivision (b) of Section 1368.

(e) Every health care service plan contract that is issued, amended, renewed, or delivered in this state on or after January 1, 2000, shall, effective January 1, 2001, provide an enrollee with the opportunity to seek an independent medical review whenever health care services have been denied, modified, or delayed by the plan, or by one of its contracting providers, if the decision was based in whole or in part on a finding that the proposed health care services are not medically necessary. For purposes of this article, an enrollee may designate an agent to act on his or her behalf, as described in paragraph (2) of subdivision (b) of Section 1368. The provider may join with or otherwise assist the enrollee in seeking an independent medical review, and may advocate on behalf of the enrollee.

(f) Medi-Cal beneficiaries enrolled in a health care service plan shall not be excluded from participation. Medicare beneficiaries enrolled in a health care service plan shall not be excluded unless expressly preempted by federal law. Reviews of cases for Medi-Cal enrollees shall be conducted in accordance with statutes and regulations for the Medi-Cal program.

(g) The department may seek to integrate the quality of care and consumer protection provisions, including remedies, of the Independent Medical Review System with related dispute resolution procedures of other health care agency programs, including the Medicare and Medi-Cal programs, in a way that minimizes the potential for duplication, conflict, and added costs. Nothing in this subdivision shall be construed to limit any rights conferred upon enrollees under this chapter.

(h) The independent medical review process authorized by this article is in addition to any other procedures or remedies that may be available.

(i) No later than January 1, 2001, every health care service plan shall prominently display in every plan member handbook or relevant informational brochure, in every plan contract, on enrollee evidence of coverage forms, on copies of plan procedures for resolving grievances, on letters of denials issued by either the plan or its contracting organization, on the grievance forms required under Section 1368, and on all written responses to grievances, information concerning the right of an enrollee to request an independent medical review in cases where the enrollee believes that health care services have been improperly denied, modified, or delayed by the plan, or by one of its contracting providers.

(j) An enrollee may apply to the department for an independent medical review when all of the following conditions are met:

(1) (A) The enrollee's provider has recommended a health care service as medically necessary, or

(B) The enrollee has received urgent care or emergency services that a provider determined was medically necessary, or

(C) The enrollee, in the absence of a provider recommendation under subparagraph (A) or the receipt of urgent care or emergency services by a provider under subparagraph (B), has been seen by an in-plan provider for the diagnosis or treatment of the medical condition for which the enrollee seeks independent review. The plan shall expedite access to an in-plan provider upon request of an enrollee. The in-plan provider need not recommend the disputed health care service as a condition for the enrollee to be eligible for an independent review.

For purposes of this article, the enrollee's provider may be an out-of-plan provider. However, the plan shall have no liability for payment of services provided by an out-of-plan provider, except as provided pursuant to subdivision (c) of Section 1374.34.

(2) The disputed health care service has been denied, modified, or delayed by the plan, or by one of its contracting providers, based in whole or in part on a decision that the health care service is not medically necessary.

(3) The enrollee has filed a grievance with the plan or its contracting provider pursuant to Section 1368, and the disputed decision is upheld or the grievance remains unresolved after 30 days. The enrollee shall not be required to participate in the plan's grievance process for more than 30 days. In the case of a grievance that requires expedited review pursuant to Section 1368.01, the enrollee shall not be required to participate in the plan's grievance process for more than three days.

(k) An enrollee may apply to the department for an independent medical review of a decision to deny, modify, or delay health care

services, based in whole or in part on a finding that the disputed health care services are not medically necessary, within six months of any of the qualifying periods or events under subdivision (j). The director may extend the application deadline beyond six months if the circumstances of a case warrant the extension.

(*l*) The enrollee shall pay no application or processing fees of any kind.

(m) As part of its notification to the enrollee regarding a disposition of the enrollee's grievance that denies, modifies, or delays health care services, the plan shall provide the enrollee with a one-page application form approved by the department, and an addressed envelope, which the enrollee may return to initiate an independent medical review. The plan shall include on the form any information required by the department to facilitate the completion of the independent medical review, such as the enrollee's diagnosis or condition, the nature of the disputed health care service sought by the enrollee, a means to identify the enrollee's case, and any other material information. The form shall also include the following:

(1) Notice that a decision not to participate in the independent medical review process may cause the enrollee to forfeit any statutory right to pursue legal action against the plan regarding the disputed health care service.

(2) A statement indicating the enrollee's consent to obtain any necessary medical records from the plan, any of its contracting providers, and any out-of-plan provider the enrollee may have consulted on the matter, to be signed by the enrollee.

(3) Notice of the enrollee's right to provide information or documentation, either directly or through the enrollee's provider, regarding any of the following:

(A) A provider recommendation indicating that the disputed health care service is medically necessary for the enrollee's medical condition.

(B) Medical information or justification that a disputed health care service, on an urgent care or emergency basis, was medically necessary for the enrollee's medical condition.

(C) Reasonable information supporting the enrollee's position that the disputed health care service is or was medically necessary for the enrollee's medical condition, including all information provided to the enrollee by the plan or any of its contracting providers, still in the possession of the enrollee, concerning a plan or provider decision regarding disputed health care services, and a copy of any materials the enrollee submitted to the plan, still in the possession of the enrollee, in support of the grievance, as well as any additional material that the enrollee believes is relevant.

(n) Upon notice from the department that the health care service plan's enrollee has applied for an independent medical review, the plan or its contracting providers shall provide to the independent medical review organization designated by the department a copy of all of the following documents within three business days of the plan's receipt of the department's notice of a request by an enrollee for an independent review:

(1) (A) A copy of all of the enrollee's medical records in the possession of the plan or its contracting providers relevant to each of the following:

(i) The enrollee's medical condition.

(ii) The health care services being provided by the plan and its contracting providers for the condition.

(iii) The disputed health care services requested by the enrollee for the condition.

(B) Any newly developed or discovered relevant medical records in the possession of the plan or its contracting providers after the initial documents are provided to the independent medical review organization shall be forwarded immediately to the independent medical review organization. The plan shall concurrently provide a copy of medical records required by this subparagraph to the enrollee or the enrollee's provider, if authorized by the enrollee, unless the offer of medical records is declined or otherwise prohibited by law. The confidentiality of all medical record information shall be maintained pursuant to applicable state and federal laws.

(2) A copy of all information provided to the enrollee by the plan and any of its contracting providers concerning plan and provider decisions regarding the enrollee's condition and care, and a copy of any materials the enrollee or the enrollee's provider submitted to the plan and to the plan's contracting providers in support of the enrollee's request for disputed health care services. This documentation shall include the written response to the enrollee's grievance, required by paragraph (4) of subdivision (a) of Section 1368. The confidentiality of any enrollee medical information shall be maintained pursuant to applicable state and federal laws.

(3) A copy of any other relevant documents or information used by the plan or its contracting providers in determining whether disputed health care services should have been provided, and any statements by the plan and its contracting providers explaining the reasons for the decision to deny, modify, or delay disputed health care services on the basis of medical necessity. The plan shall concurrently provide a copy of documents required by this paragraph, except for any information found by the director to be legally privileged information, to the enrollee and the enrollee's provider. The department and the independent review

organization shall maintain the confidentiality of any information found by the director to be the proprietary information of the plan.

SEC. 39. Section 1374.32 of the Health and Safety Code is amended to read:

1374.32. (a) By January 1, 2001, the department shall contract with one or more independent medical review organizations in the state to conduct reviews for purposes of this article. The independent medical review organizations shall be independent of any health care service plan doing business in this state. The director may establish additional requirements, including conflict-of-interest standards, consistent with the purposes of this article, that an organization shall be required to meet in order to qualify for participation in the Independent Medical Review System and to assist the department in carrying out its responsibilities.

(b) The independent medical review organizations and the medical professionals retained to conduct reviews shall be deemed to be medical consultants for purposes of Section 43.98 of the Civil Code.

(c) The independent medical review organization, any experts it designates to conduct a review, or any officer, director, or employee of the independent medical review organization shall not have any material professional, familial, or financial affiliation, as determined by the director, with any of the following:

(1) The plan.

(2) Any officer, director, or employee of the plan.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the plan, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the enrollee whose treatment is under review, or the alternative therapy, if any, recommended by the plan.

(6) The enrollee or the enrollee's immediate family.

(d) In order to contract with the department for purposes of this article, an independent medical review organization shall meet all of the following requirements:

(1) The organization shall not be an affiliate or a subsidiary of, nor in any way be owned or controlled by, a health plan or a trade association of health plans. A board member, director, officer, or employee of the independent medical review organization shall not serve as a board member, director, or employee of a health care service plan. A board member, director, or officer of a health plan or a trade association of health plans shall not serve as a board member, director, officer, or employee of an independent medical review organization.

(2) The organization shall submit to the department the following information upon initial application to contract for purposes of this article and, except as otherwise provided, annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent medical review organization controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent medical review organization, as well as a statement regarding any past or present relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group, or board or committee of a plan, managed care organization, or provider group.

(E) (i) The percentage of revenue the independent medical review organization receives from expert reviews, including, but not limited to, external medical reviews, quality assurance reviews, and utilization reviews.

(ii) The names of any health care service plan or provider group for which the independent medical review organization provides review services, including, but not limited to, utilization review, quality assurance review, and external medical review. Any change in this information shall be reported to the department within five business days of the change.

(F) A description of the review process including, but not limited to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent medical review organization uses to identify and recruit medical professionals to review treatment and treatment recommendation decisions, the number of medical professionals credentialed, and the types of cases and areas of expertise that the medical professionals are credentialed to review.

(H) A description of how the independent medical review organization ensures compliance with the conflict-of-interest provisions of this section.

(3) The organization shall demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the medical professionals retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions and the medical necessity of treatments or therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensures the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensures adequate screening for conflicts-of-interest, pursuant to paragraph (5).

(4) Medical professionals selected by independent medical review organizations to review medical treatment decisions shall be physicians or other appropriate providers who meet the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the enrollee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other provision of law, the medical professional shall hold a nonrestricted license in any state of the United States, and for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. The independent medical review organization shall give preference to the use of a physician licensed in California as the reviewer, except when training and experience with the issue under review reasonably requires the use of an out-of-state reviewer.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(5) Neither the expert reviewer, nor the independent medical review organization, shall have any material professional, material familial, or material financial affiliation with any of the following:

(A) The plan or a provider group of the plan, except that an academic medical center under contract to the plan to provide services to enrollees may qualify as an independent medical review organization provided it will not provide the service and provided the center is not the developer or manufacturer of the proposed treatment.

(B) Any officer, director, or management employee of the plan.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the treatment.

(D) The institution at which the treatment would be provided.

(E) The development or manufacture of the treatment proposed for the enrollee whose condition is under review.

(F) The enrollee or the enrollee's immediate family.

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

(A) ''Material familial affiliation'' means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) ''Material professional affiliation'' means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent medical review organization. ''Material professional affiliation'' does not include affiliations that are limited to staff privileges at a health facility.

(C) ''Material financial affiliation'' means any financial interest of more than 5 percent of total annual revenue or total annual income of an independent medical review organization or individual to which this subdivision applies. ''Material financial affiliation'' does not include payment by the plan to the independent medical review organization for the services required by this section, nor does ''material financial affiliation'' include an expert's participation as a contracting plan provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(e) The department shall provide, upon the request of any interested person, a copy of all nonproprietary information, as determined by the director, filed with it by an independent medical review organization seeking to contract under this article. The department may charge a nominal fee to the interested person for photocopying the requested information.

SEC. 40. Section 1374.9 of the Health and Safety Code is amended to read:

1374.9. For violations of Section 1374.7, the commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any health care service plan that violates Section 1374.7, or that violates any rule or order adopted or issued pursuant to this section, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000)

for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

(b) The administrative penalties shall be paid to the Managed Health Care Fund.

(c) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this chapter.

SEC. 41. Section 1380 of the Health and Safety Code is amended to read:

1380. (a) The department shall conduct periodically an onsite medical survey of the health delivery system of each plan. The survey shall include a review of the procedures for obtaining health services, the procedures for regulating utilization, peer review mechanisms, internal procedures for assuring quality of care, and the overall performance of the plan in providing health care benefits and meeting the health needs of the subscribers and enrollees.

(b) The survey shall be conducted by a panel of qualified health professionals experienced in evaluating the delivery of prepaid health care. The department shall be authorized to contract with professional organizations or outside personnel to conduct medical surveys and these contracts shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These organizations or personnel shall have demonstrated the ability to objectively evaluate the delivery of health care by plans or health maintenance organizations.

(c) Surveys performed pursuant to this section shall be conducted as often as deemed necessary by the director to assure the protection of subscribers and enrollees, but not less frequently than once every three years. Nothing in this section shall be construed to require the survey team to visit each clinic, hospital office, or facility of the plan. To avoid duplication, the director shall employ, but is not bound by, the following:

(1) For hospital-based health care service plans, to the extent necessary to satisfy the requirements of this section, the findings of inspections conducted pursuant to Section 1279.

(2) For health care service plans contracting with the State Department of Health Services pursuant to the Waxman-Duffy Prepaid Health Plan Act, the findings of reviews conducted pursuant to Section 14456 of the Welfare and Institutions Code.

(3) To the extent feasible, reviews of providers conducted by professional standards review organizations, and surveys and audits conducted by other governmental entities.

(d) Nothing in this section shall be construed to require the medical survey team to review peer review proceedings and records conducted and compiled under Section 1370 or medical records. However, the director shall be authorized to require onsite review of these peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to subscribers and enrollees. Where medical record review is authorized, the survey team shall insure that the confidentiality of physician-patient relationship is safeguarded in accordance with existing law and neither the survey team nor the director or the director's staff may be compelled to disclose this information except in accordance with the physician-patient relationship. The director shall ensure that the confidentiality of the peer review proceedings and records is maintained. The disclosure of the peer review proceedings and records to the director or the medical survey team shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1.

(e) The procedures and standards utilized by the survey team shall be made available to the plans prior to the conducting of medical surveys.

(f) During the survey the members of the survey team shall examine the complaint files kept by the plan pursuant to Section 1368. The survey report issued pursuant to subdivision (i) shall include a discussion of the plan's record for handling complaints.

(g) During the survey the members of the survey team shall offer such advice and assistance to the plan as deemed appropriate.

(h) (1) Survey results shall be publicly reported by the director as quickly as possible but no later than 180 days following the completion of the survey unless the director determines, in his or her discretion, that additional time is reasonably necessary to fully and fairly report the survey results. The director shall provide the plan with an overview of survey findings and notify the plan of deficiencies found by the survey team at least 90 days prior to the release of the public report.

(2) Reports on all surveys, deficiencies, and correction plans shall be open to public inspection except that no surveys, deficiencies, or correction plans shall be made public unless the plan has had an opportunity to review the report and file a response within 45 days of the date that the department provided the report to the plan. After reviewing the plan's response, the director shall issue a final report that excludes any survey information and legal findings and conclusions determined by the director to be in error, describes compliance efforts, identifies deficiencies that have been corrected by the plan by the time of the director's receipt of the plan's 45-day response, and describes remedial actions for deficiencies requiring longer periods to the remedy required by the director or proposed by the plan.

(3) The final report shall not include a description of ''acceptable'' or of ''compliance'' for any uncorrected deficiency.

(4) Upon making the final report available to the public, a single copy of a summary of the final report's findings shall be made available free of charge by the department to members of the public, upon request. Additional copies of the summary may be provided at the department's cost. The summary shall include a discussion of compliance efforts, corrected deficiencies, and proposed remedial actions.

(5) If requested by the plan, the director shall append the plan's response to the final report issued pursuant to paragraph (2), and shall append to the summary issued pursuant to paragraph (4) a brief statement provided by the plan summarizing its response to the report. The plan may modify its response or statement at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the final report will be made available to the public. The plan may file an addendum to its response or statement at any time after the final report has been made available to the public. The addendum to the response or statement shall also be made available to the public.

(6) Any information determined by the director to be confidential pursuant to statutes relating to the disclosure of records, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall not be made public.

(i) (1) The director shall give the plan a reasonable time to correct deficiencies. Failure on the part of the plan to comply to the director's satisfaction shall constitute cause for disciplinary action against the plan.

(2) No later than 18 months following release of the final report required by subdivision (h), the department shall conduct a follow-up review to determine and report on the status of the plan's efforts to correct deficiencies. The department's follow-up report shall identify any deficiencies reported pursuant to subdivision (h) that have not been corrected to the satisfaction of the director.

(3) If requested by the plan, the director shall append the plan's response to the follow-up report issued pursuant to paragraph (2). The plan may modify its response at any time and provide modified copies to the department for public distribution no later than 10 days from the date of notification from the department that the follow-up report will be made available to the public. The plan may file an addendum to its response at any time after the follow-up report has been made available to the public. The addendum to the response or statement shall also be made available to the public.

(j) The director shall provide to the plan and to the executive officer of the Board of Dental Examiners a copy of information relating to the quality of care of any licensed dental provider contained in any report described in subdivisions (h) and (i) that, in the judgment of the director, indicates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. Any confidential information provided by the director shall not be made public pursuant to this subdivision. Notwithstanding any other provision of law, the disclosure of this information to the plan and to the executive officer shall not operate as a waiver of confidentiality. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Managed Health Care, the Director of the Department of Managed Health Care, the Board of Dental Examiners, or any officer, agent, employee, consultant, or contractor of the state or the department or the board for the release of any false or unauthorized information pursuant to this section, unless the release of that information is made with knowledge and malice.

(k) Nothing in this section shall be construed as affecting the director's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390) of this chapter.

SEC. 42. Section 1380.1 of the Health and Safety Code is amended to read:

1380.1. (a) (1) With the department as the lead agency, the department and the State Department of Health Services shall convene a working group for the purpose of developing standards for quality audits of providers that provide services to enrollees pursuant to contracts governed by this chapter.

(2) The working group shall include, but not be limited to, representatives of health care service plans, consumer organizations, public and private purchasers of health care, and providers, including medical groups, independent practice associations, and health facilities.

(3) The working group shall be comprised so that a balance of perspectives of providers, plans, purchasers of health care, and consumers can reasonably be expected to be represented.

(4) The department may consult with the National Commission on Quality Assurance, the federal Health Care Financing Authority, and other organizations that have worked toward defining quality standards.

(5) The department shall consult with the State Department of Health Services on the implementation of this section.

(6) The Legislature recognizes that streamlining audits, and defining quality standards, are best achieved with consideration of federal regulatory and third party auditing standards.

(b) To the extent feasible, the goals of this working group shall include, but not be limited to, all of the following:

(1) Recommending ways to reduce duplicative audits of providers by health plans.

(2) Developing a core set of health care quality standards that can serve as baseline requirements for meeting audit standards for contracts governed by this chapter.

(3) Recommending data collection methods and processes that can result in better coordination of health care quality audits, lessen the burden on providers, and maintain high quality standards for providers.

(4) Developing recommendations as to how health care service plans can best access quality information about providers in order to ensure higher quality standards than those core standards identified by the working group.

(5) Recommending standards for determining appropriate nonprofit organizations to conduct audits pursuant to the standards developed in this section.

(6) Determining how the results of quality audits shall be made available to the public.

(c) The department shall report to the Governor, the Department of Managed Health Care, the State Department of Health Services, and the appropriate committees of the Legislature, on or before January 1, 2000, its findings and recommendations pursuant to this section.

SEC. 43. Section 1383.15 of the Health and Safety Code is amended to read:

1383.15. (a) When requested by an enrollee or participating health professional who is treating an enrollee, a health care service plan shall provide or authorize a second opinion by an appropriately qualified health care professional. Reasons for a second opinion to be provided or authorized shall include, but are not limited to, the following:

(1) If the enrollee questions the reasonableness or necessity of recommended surgical procedures.

(2) If the enrollee questions a diagnosis or plan of care for a condition that threatens loss of life, loss of limb, loss of bodily function, or substantial impairment, including, but not limited to, a serious chronic condition.

(3) If the clinical indications are not clear or are complex and confusing, a diagnosis is in doubt due to conflicting test results, or the treating health professional is unable to diagnose the condition, and the enrollee requests an additional diagnosis.

(4) If the treatment plan in progress is not improving the medical condition of the enrollee within an appropriate period of time given the diagnosis and plan of care, and the enrollee requests a second opinion regarding the diagnosis or continuance of the treatment.

(5) If the enrollee has attempted to follow the plan of care or consulted with the initial provider concerning serious concerns about the diagnosis or plan of care.

(b) For purposes of this section, an appropriately qualified health care professional is a primary care physician, specialist, or other licensed health care provider who is acting within his or her scope of practice and who possesses a clinical background, including training and expertise, related to the particular illness, disease, condition or conditions associated with the request for a second opinion. For purposes of a specialized health care service plan, an appropriately qualified health care professional is a licensed health care provider who is acting within his or her scope of practice and who possesses a clinical background, including training and expertise, related to the particular illness, disease, condition or conditions associated with the request for a second opinion.

(c) If an enrollee or participating health professional who is treating an enrollee requests a second opinion pursuant to this section, an authorization or denial shall be provided in an expeditious manner. When the enrollee's condition is such that the enrollee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or lack of timeliness that would be detrimental to the enrollee's ability to regain maximum function, the second opinion shall be authorized or denied in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed 72 hours after the plan's receipt of the request, whenever possible. Each plan shall file with the Department of Managed Health Care timelines for responding to requests for second opinions for cases involving emergency needs, urgent care, and other requests by July 1, 2000, and within 30 days of any amendment to the timelines. The timelines shall be made available to the public upon request.

(d) If a health care service plan approves a request by an enrollee for a second opinion, the enrollee shall be responsible only for the costs of applicable copayments that the plan requires for similar referrals.

(e) If the enrollee is requesting a second opinion about care from his or her primary care physician, the second opinion shall be provided by an appropriately qualified health care professional of the enrollee's choice within the same physician organization.

(f) If the enrollee is requesting a second opinion about care from a specialist, the second opinion shall be provided by any provider of the enrollee's choice from any independent practice association or medical group within the network of the same or equivalent specialty. If the specialist is not within the same physician organization, the plan shall incur the cost or negotiate the fee arrangements of that second opinion, beyond the applicable copayments which shall be paid by the enrollee. If not authorized by the plan, additional medical opinions not within the

original physician organization shall be the responsibility of the enrollee.

(g) If there is no participating plan provider within the network who meets the standard specified in subdivision (b), then the plan shall authorize a second opinion by an appropriately qualified health professional outside of the plan's provider network. In approving a second opinion either inside or outside of the plan's provider network, the plan shall take into account the ability of the enrollee to travel to the provider.

(h) The health care service plan shall require the second opinion health professional to provide the enrollee and the initial health professional with a consultation report, including any recommended procedures or tests that the second opinion health professional believes appropriate. Nothing in this section shall be construed to prevent the plan from authorizing, based on its independent determination, additional medical opinions concerning the medical condition of an enrollee.

(i) If the health care service plan denies a request by an enrollee for a second opinion, it shall notify the enrollee in writing of the reasons for the denial and shall inform the enrollee of the right to file a grievance with the plan. The notice shall comply with subdivision (b) of Section 1368.02.

(j) Unless authorized by the plan, in order for services to be covered the enrollee shall obtain services only from a provider who is participating in, or under contract with, the plan pursuant to the specific contract under which the enrollee is entitled to health care services. The plan may limit referrals to its network of providers if there is a participating plan provider who meets the standard specified in subdivision (b).

(k) This section shall not apply to health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements if, subject to all other terms and conditions of the contract that apply generally to all other benefits, access to and coverage for second opinions are not limited.

SEC. 44. Section 1391.5 of the Health and Safety Code is amended to read:

1391.5. (a) If, after examination or investigation, the director has reasonable grounds to believe that irreparable loss and injury to the plan's enrollee or enrollees occurred or may occur as a result of any act or practice unless the director acts immediately, the director may, by written order, addressed to that person, order the discontinuance of the unsafe or injurious act or practice. The order shall become effective immediately, but shall not become final except in accordance with this section.

(b) No order issued pursuant to this section shall become final except after notice to the affected person of the director's intention to make the order final and of the reasons for the finding. The director shall also notify that person that upon receiving a request for hearing by the plan, the matter shall be set for hearing to commence with 15 business days after receipt of the request, unless that person consents to have the hearing commence at a later date.

(c) If no hearing is requested within 15 days after the mailing or service of the required notice, and none is ordered by the director, the order shall become final on the 15th day without a hearing and shall not be subject to review by any court or agency notwithstanding subdivision (b) of Section 1397.

(d) If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the director shall have all of the powers granted under that act.

(e) If, upon conclusion of the hearing, it appears to the director that the affected person has conducted business in an unsafe or injurious manner, the director shall make the order of discontinuance final.

(f) For purposes of this section, ''person'' includes any plan, solicitor firm, or any representative thereof, a solicitor, or any other person defined in subdivision (j) of Section 1345.

SEC. 45. Section 1393.6 of the Health and Safety Code is amended to read:

1393.6. For violations of Article 3.1 (commencing with Section 1357) and Article 3.15 (commencing with Section 1357.50), the director may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any person, solicitor, or solicitor firm, other than a health care service plan, who willfully violates any provision of this chapter, or who willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two hundred fifty dollars ($250) for each first violation, and of not less than one thousand dollars ($1,000) and not more than two thousand five hundred dollars ($2,500) for each subsequent violation.

(b) Any health care service plan that willfully violates any provision of this chapter, or that willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

(c) The administrative penalties shall be paid to the Managed Health Care Fund.

(d) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the director to enforce the provisions of this chapter.

SEC. 46. Section 1397.5 of the Health and Safety Code is amended to read:

1397.5. (a) The director shall make and file annually with the Department of Managed Health Care as a public record, an aggregate summary of grievances against plans filed with the director by enrollees or subscribers. This summary shall include at least all of the following information:

(1) The total number of grievances filed.

(2) The types of grievances.

(b) The summary set forth in subdivision (a) shall include the following disclaimer:

THIS INFORMATION IS PROVIDED FOR STATISTICAL PURPOSES ONLY. THE DIRECTOR OF THE DEPARTMENT OF MANAGED CARE HAS NEITHER INVESTIGATED NOR DETERMINED WHETHER THE GRIEVANCES COMPILED WITHIN THIS SUMMARY ARE REASONABLE OR VALID.

(c) Nothing in this section shall require or authorize the disclosure of grievances filed with or received by the director and made confidential pursuant to any other provision of law including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Nothing in this section shall affect any other provision of law including, but not limited to, the California Public Records Act and the Information Practices Act of 1977.

SEC. 47. Section 1398 of the Health and Safety Code is repealed.

SEC. 48. Section 11758.47 of the Health and Safety Code is amended to read:

11758.47. Service providers may assist Medi-Cal beneficiaries, upon request, to file a fair hearing request in accordance with Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code, or may inform Medi-Cal beneficiaries about the Department of Managed Health Care's toll-free telephone number for health care service plan members or the State Department of Health Services' ombudsman for Medi-Cal beneficiaries enrolled in Medi-Cal managed care plans.

SEC. 49. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

''Health care facilities,'' as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. ''Health facilities,'' as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements

applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall

be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a ''transfer'' means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be

required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Health Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods

to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall become operative on January 1, 2001.

SEC. 50. Section 102910 of the Health and Safety Code is amended to read:

102910. For the purpose of conducting the three-year study required pursuant to Section 102905, the department is hereby encouraged to contract with a federally recognized tribe or tribal organization or an American Indian-controlled health care corporation or research institution having a record of good standing with the Department of Managed Health Care and the Indian Health program within the department, and established competence in the area of records management.

SEC. 51. Section 127580 of the Health and Safety Code is amended to read:

127580. The office, after consultation with the Insurance Commissioner, the Director of the Department of Managed Health Care, the State Director of Health Services, and the Director of Industrial Relations, shall adopt a California uniform billing form format for professional health care services and a California uniform billing form format for institutional provider services. The format for professional health care services shall be the format developed by the National Uniform Claim Form Task Force. The format for institutional provider services shall be the format developed by the National Uniform Billing Committee. The formats shall be acceptable for billing in federal Medicare and medicaid programs. The office shall specify a single

uniform system for coding diagnoses, treatments, and procedures to be used as part of the uniform billing form formats. The system shall be acceptable for billing in federal Medicare and medicaid programs.

SEC. 52. Section 128725 of the Health and Safety Code is amended to read:

128725. The functions and duties of the commission shall include the following:

(a) Advise the office on the implementation of the new, consolidated data system.

(b) Advise the office regarding the ongoing need to collect and report health facility data and other provider data.

(c) Annually develop a report to the director of the office regarding changes that should be made to existing data collection systems and forms. Copies of the report shall be provided to the Senate Health and Human Services Committee and to the Assembly Health Committee.

(d) Advise the office regarding changes to the uniform accounting and reporting systems for health facilities.

(e) Conduct public meetings for the purposes of obtaining input from health facilities, other providers, data users, and the general public regarding this chapter and Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(f) Advise the Secretary of Health and Welfare on the formulation of general policies which shall advance the purposes of this part.

(g) Advise the office on the adoption, amendment, or repeal of regulations it proposes prior to their submittal to the Office of Administrative Law.

(h) Advise the office on the format of individual health facility or other provider data reports and on any technical and procedural issues necessary to implement this part.

(i) Advise the office on the formulation of general policies which shall advance the purposes of Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(j) Recommend, in consultation with a 12-member technical advisory committee appointed by the chairperson of the commission, to the office the data elements necessary for the production of outcome reports required by Section 128745.

(k) (1) The technical advisory committee appointed pursuant to subdivision (j) shall be composed of two members who shall be hospital representatives appointed from a list of at least six persons nominated by the California Association of Hospitals and Health Systems, two members who shall be physicians and surgeons appointed from a list of at least six persons nominated by the California Medical Association, two members who shall be registered nurses appointed from a list of at least six persons nominated by the California Nurses Association, one

medical record practitioner who shall be appointed from a list of at least six persons nominated by the California Health Information Association, one member who shall be a representative of a hospital authorized to report as a group pursuant to subdivision (d) of Section 128760, two members who shall be representative of California research organizations experienced in effectiveness review of medical procedures or surgical procedures, or both procedures, one member representing the Health Access Foundation, and one member representing the Consumers Union. Members of the technical advisory committee shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the technical advisory committee.

(2) The commission shall submit its recommendation to the office regarding the first of the reports required pursuant to subdivision (a) of Section 128745 no later than January 1, 1993. The technical advisory committee shall submit its initial recommendations to the commission pursuant to subdivision (d) of Section 128750 no later than January 1, 1994. The commission, with the advice of the technical advisory committee, may periodically make additional recommendations under Sections 128745 and 128750 to the office, as appropriate.

(*l*) (1) Assess the value and usefulness of the reports required by Sections 127285, 128735, and 128740. On or before December 1, 1997, the commission shall submit recommendations to the office to accomplish all of the following:

(A) Eliminate redundant reporting.

(B) Eliminate collection of unnecessary data.

(C) Augment data bases as deemed valuable to enhance the quality and usefulness of data.

(D) Standardize data elements and definitions with other health data collection programs at both the state and national levels.

(E) Enable linkage with, and utilization of, existing data sets.

(F) Improve the methodology and data bases used for quality assessment analyses, including, but not limited to, risk-adjusted outcome reports.

(G) Improve the timeliness of reporting and public disclosure.

(2) The commission shall establish a committee to implement the evaluation process. The committee shall include representatives from the health care industry, providers, consumers, payers, purchasers, and government entities, including the Department of Managed Health Care, the departments that comprise the Health and Welfare Agency, and others deemed by the commission to be appropriate to the evaluation of the data bases. The committee may establish subcommittees including technical experts.

(3) In order to ensure the timely implementation of the provisions of the legislation enacted in the 1997–98 Regular Session that amended this part, the office shall present an implementation work plan to the commission. The work plan shall clearly define goals and significant steps within specified timeframes that must be completed in order to accomplish the purposes of that legislation. The office shall make periodic progress reports based on the work plan to the commission. The commission may advise the Secretary of Health and Welfare of any significant delays in following the work plan. If the commission determines that the office is not making significant progress toward achieving the goals outlined in the work plan, the commission shall notify the office and the secretary of that determination. The commission may request the office to submit a plan of correction outlining specific remedial actions and timeframes for compliance. Within 90 days of notification, the office shall submit a plan of correction to the commission.

(m) (1) As the office and the commission deem necessary, the commission may establish committees and appoint persons who are not members of the commission to these committees as are necessary to carry out the purposes of the commission. Representatives of area health planning agencies shall be invited, as appropriate, to serve on committees established by the office and the commission relative to the duties and responsibilities of area health planning agencies. Members of the standing committees shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of these committees.

(2) Whenever the office or the commission does not accept the advice of the other body on proposed regulations or on major policy issues, the office or the commission shall provide a written response on its action to the other body within 30 days, if so requested.

(3) The commission or the office director may appeal to the Secretary of Health and Welfare over disagreements on policy, procedural, or technical issues.

SEC. 53. Section 740 of the Insurance Code is amended to read:

740. (a) Notwithstanding any other provision of law, and except as provided herein, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing the services it is subject to the jurisdiction of another agency of this or another state or the federal government.

(b) A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or the federal government by providing to the commissioner the appropriate certificate or license issued by the other governmental agency that permits or qualifies it to provide those services for which it is licensed or certificated.

(c) Any person or entity that is unable to show that it is subject to the jurisdiction of another agency of this or another state or the federal government, shall submit to an examination by the commissioner to determine the organization and solvency of the person or the entity, and to determine whether the person or entity is in compliance with the applicable provisions of this code, and shall be required to obtain a certificate of authority to do business in California and be required to meet all appropriate reserve, surplus, capital, and other necessary requirements imposed by this code for all insurers.

(d) Any person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or the federal government shall be subject to all appropriate provisions of this code regarding the conduct of its business.

(e) The department shall prepare and maintain for public inspection a list of those persons or entities described in subdivision (a) that are not subject to the jurisdiction of another agency of this or another state or the federal government and that the department knows to be operating in this state. There shall be no liability of any kind on the part of the state, the department, and its employees for the accuracy of the list or for any comments made with respect to it.

(f) Any administrator licensed by the department who advertises or administers coverage in this state described in subdivision (a), that is provided by any person or entity described in subdivision (c), and where the coverage does not meet all pertinent requirements specified in this code and that is not provided or completely underwritten, insured or otherwise fully covered by an admitted life or disability insurer, hospital service plan or health care service plan, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, and any production agency licensed by the department involved in the transaction, all financial and operational information relative to the content and scope of the plan and, specifically, as to the lack of insurance or other coverage.

Any production agency obtaining knowledge of any coverage relative to the content and scope of a hospital service plan or health care service plan, as required under this subdivision, shall advise and disclose to any purchaser, prospective purchaser, covered person or entity, the knowledge regarding the content and scope of the plan and, specifically, as to the lack of insurance by an admitted carrier or other qualified plan.

(g) A health care service plan, as defined in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, shall not be subject to this section.

(h) The department shall notify, in writing, the Director of the Department of Managed Health Care whenever it determines that a multiple employer trust qualifies as a health care service plan subject to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(i) Any health care service plan, including a self-insured reimbursement plan that pays for or reimburses any part of the cost of health care services, operated by any city, county, city and county, public entity, or political subdivision, or a public joint labor management trust as described in subdivision (c) of Section 1349.2 of the Health and Safety Code, that is exempt pursuant to Section 1349.2 of the Health and Safety Code from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), is also exempt from this code.

SEC. 54. Section 742.407 of the Insurance Code is amended to read:

742.407. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a multiple employer welfare arrangement.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Health Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 55. Section 742.435 of the Insurance Code is amended to read:

742.435. The Department of Insurance, in consultation with the Department of Managed Health Care, shall conduct an evaluation of multiple employer welfare arrangements and report to the Legislature and the Governor by January 1, 2002. The evaluation shall include, but not be limited to, the effectiveness of multiple employer welfare arrangements in providing participants with options for affordable health care coverage, and the effect of multiple employer welfare arrangements on persons or entities purchasing health care coverage who are not multiple employer welfare arrangement participants.

SEC. 56. Section 791.02 of the Insurance Code is amended to read:

791.02. As used in this act:

(a) (1) ''Adverse underwriting decision'' means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution which provides insurance to other than preferred or standard risks, shall not include such placement where the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) ''Affiliate'' or ''affiliated'' means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) ''Agent'' means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) ''Applicant'' means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) ''Consumer report'' means any written, oral, or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general

reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(f) ''Consumer reporting agency'' means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

(g) ''Control,'' including the terms ''controlled by'' or ''under common control with,'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(h) ''Declination of insurance coverage'' means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) ''Individual'' means any natural person who:

(1) In the case of property or casualty insurance, is a past, present or proposed named insured or certificate holder;

(2) In the case of life or disability insurance, is a past, present or proposed principal insured or certificate holder;

(3) Is a past, present or proposed policyowner;

(4) Is a past or present applicant;

(5) Is a past or present claimant; or

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) ''Institutional source'' means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than:

(1) An agent,

(2) The individual who is the subject of the information, or

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) ''Insurance institution'' means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance. ''Insurance institution'' shall not include agents, insurance-support organizations, or health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(*l*) ''Insurance-support organization'' means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, or

(B) The collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered ''insurance-support organizations'': agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) ''Insurance transaction'' means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails:

(1) The determination of an individual's eligibility for an insurance coverage, benefit, or payment, or

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) ''Investigative consumer report'' means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(o) ''Medical care institution'' means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) ''Medical professional'' means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) ''Medical record information'' means personal information that:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment, and

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(r) ''Person'' means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) ''Personal information'' means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. ''Personal information'' includes an individual's name and address and ''medical record information'' but does not include ''privileged information.''

(t) ''Policyholder'' means any person who:

(1) In the case of individual property or casualty insurance, is a present named insured;

(2) In the case of individual life or disability insurance, is a present policyowner; or

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) ''Pretext interview'' means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not,

(2) Pretends to represent a person he or she is not in fact representing,

(3) Misrepresents the true purpose of the interview, or

(4) Refuses to identify himself or herself upon request.

(v) ''Privileged information'' means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered ''personal information'' under this act if it is disclosed in violation of Section 791.13.

(w) ''Residual market mechanism'' means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) ''Termination of insurance coverage'' or ''termination of an insurance policy'' means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) ''Unauthorized insurer'' means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) ''Commissioner'' means the Insurance Commissioner; except in the case of a person or entity subject to the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), and except as to any person defined in subdivision (k) when engaged in providing information or evaluation to a person or entity subject to the provisions of that act, and in those instances only, the term 'commissioner' shall mean the Director of the Department of Managed Health Care.

(aa) 'Insurance' includes a medical service or hospital service agreement or contract issued by a person or entity subject to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

SEC. 57. Section 1068 of the Insurance Code is amended to read:

1068. (a) As used in this section, the following definitions shall apply:

(1) ''Health care service plan'' means any plan as defined in Section 1345 of the Health and Safety Code, but this section does not apply to specialized health care service contracts.

(2) ''Carrier'' means a health care service plan, an insurer issuing group disability coverage which covers hospital, medical, or surgical expenses, a nonprofit hospital service plan, or any other entity responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract.

(3) ''Insolvency'' means that the Director of the Department of Managed Health Care has determined that the health care service plan is not financially able to provide health care services to its enrollees and (A) the Director of the Department of Managed Health Care has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the Director of the Department of Managed Health Care or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(b) In the event of the insolvency of a health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Director of the Department of Managed Health Care pursuant to Section 1394.7 of the Health and Safety Code, any insurer, nonprofit hospital service plan, and any other entity, other than a health care service plan, responsible for either the payment of benefits for or the provision of hospital, medical, and surgical benefits under a group contract, that participated in the enrollment process with

the insolvent health care service plan at the last regular open enrollment period of a group, shall offer enrollees of the group in the insolvent health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the group in the insolvent health care service plan the same coverages and rates that it offered to enrollees of the group at the last regular open enrollment period of the group.

SEC. 58. Section 1068.1 of the Insurance Code is amended to read:

1068.1. (a) As used in this section:

(1) ''Carrier'' means a specialized health care service plan, and any of the following entities which offer coverage comparable to the coverages offered by a specialized health care service plan: an insurer issuing group disability coverage; a nonprofit hospital service plan; or other entity responsible for either the payment of benefits for or the provision of services under a group contract.

(2) ''Insolvency'' means that the Director of the Department of Managed Health Care has determined that the specialized health care service plan is not financially able to provide specialized health care services to its enrollees and (A) the Director of the Department of Managed Health Care has taken an action pursuant to Section 1386, 1391, or 1399 of the Health and Safety Code, or (B) an order requested by the commissioner or the Attorney General has been issued by the superior court under Section 1392, 1393, or 1394.1 of the Health and Safety Code.

(3) ''Specialized health care service plan'' means any plan authorized to issue only specialized health care service plan contracts as defined in Section 1345 of the Health and Safety Code.

(b) In the event of the insolvency of a specialized health care service plan, upon order of the commissioner which shall be issued following his or her receipt of a notice issued by the Director of the Department of Managed Health Care pursuant to Section 1394.8 of the Health and Safety Code, all carriers that participated in the enrollment process with the insolvent specialized health care service plan at a group's last regular open enrollment period for the same type of specialized health care service benefits shall offer the group's enrollees in the insolvent specialized health care service plan a 30-day enrollment period commencing upon the date of insolvency. Each such carrier shall offer enrollees of the insolvent specialized health care service plan the same specialized coverage and rates that it had offered to the enrollees of the group at its last regular open enrollment period.

SEC. 59. Section 10123.35 of the Insurance Code is amended to read:

10123.35. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a self-insured welfare benefit plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Health Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 60. Section 10140.1 of the Insurance Code is amended to read:

10140.1. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by an admitted insurer licensed to issue life or disability insurance, except life and disability income policies issued or delivered on or after January 1, 1995, that are contingent upon review or testing for other diseases or medical conditions.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Health Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 60.5. Section 10123.68 of the Insurance Code is amended to read:

10123.68. (a) When requested by an insured or contracting health professional who is treating an insured, a disability insurer that covers hospital, medical, or surgical expenses shall authorize a second opinion by an appropriately qualified health care professional. Reasons for a second opinion to be provided or authorized shall include, but are not limited to, the following:

(1) If the insured questions the reasonableness or necessity of recommended surgical procedures.

(2) If the insured questions a diagnosis or plan of care for a condition that threatens loss of life, loss of limb, loss of bodily function, or substantial impairment, including, but not limited to, a serious chronic condition.

(3) If clinical indications are not clear or are complex and confusing, a diagnosis is in doubt due to conflicting test results, or the treating health professional is unable to diagnose the condition and the insured requests an additional diagnosis.

(4) If the treatment plan in progress is not improving the medical condition of the insured within an appropriate period of time given the

diagnosis and plan of care, and the insured requests a second opinion regarding the diagnosis or continuance of the treatment.

(5) If the insured has attempted to follow the plan of care or consulted with the initial provider concerning serious concerns about the diagnosis or plan of care.

(b) For purposes of this section, an appropriately qualified health care professional is a primary care physician, specialist, or other licensed health care provider who is acting within his or her scope of practice and who possesses a clinical background, including training and expertise, related to the particular illness, disease, condition or conditions associated with the request for a second opinion.

(c) If an insured or participating health professional who is treating an insured requests a second opinion pursuant to this section, an authorization or denial shall be provided in an expeditious manner. When the insured's condition is such that the insured faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or lack of timeliness that would be detrimental to the insured's life or health or could jeopardize the insured's ability to regain maximum function, the second opinion shall be authorized or denied in a timely fashion appropriate to the nature of the insured's condition, no to exceed 72 hours after the insurer's receipt of the request, whenever possible. Each insurer shall file with the Department of Insurance timelines for responding to requests for second opinions for cases involving emergency needs, urgent care, and other requests by July 1, 2000, and within 30 days of any amendment to the timelines. The timelines shall be made available to the public upon request.

(d) If an insurer approves a request by an insured for a second opinion, the insured shall be responsible only for the costs of applicable copayments that the insurer requires for similar referrals.

(e) If the insured is requesting a second opinion about care from his or her primary care physician, the second opinion shall be provided by an appropriately qualified health care professional of the insured's choice who is contracted with the insurer.

(f) If the insured is requesting a second opinion about care from a specialist, the second opinion shall be provided by any provider of the same or equivalent specialty, of the insured's choice, within the insurer's provider network, if the insurance contract limits second opinions to within a network.

(g) The insurer may limit second opinions to its network of providers if the insurance contract limits the benefit to within a network of providers and there is a participating provider who meets the standard specified in subdivision (b). If there is no participating provider who meets this standard, then the insurer shall authorize a second opinion by

an appropriately qualified health professional outside of the insurer's provider network. In approving a second opinion either inside or outside of the insurer's provider network, the insurer shall take into account the ability of the insured to travel to the provider.

(h) The insurer shall require the second opinion health professional to provide the insured and the initial health professional with a consultation report, including any recommended procedures or tests that the second opinion health professional believes appropriate. Nothing in this section shall be construed to prevent the insurer from authorizing, based on its independent determination, additional medical opinions concerning the medical condition of an insured.

(i) If the insurer denies a request by an insured for a second opinion, it shall notify the insured in writing of the reasons for the denial and shall inform the insured of the right to dispute the denial, and the procedures for exercising that right.

(j) If the insurance contract limits health care services to within a network of providers, in order for coverage to be in force, the insured shall obtain services only from a provider who is participating in, or under contract with, the insurer pursuant to the specific insurance contract under which the insured is entitled to health care service benefits.

(k) This section shall not apply to any policy or contract of disability insurance that covers hospital, medical, or surgical expenses and that does not limit second opinions, subject to all other terms and conditions of the contract.

(*l*) This section shall not apply to accident-only, specified disease, or hospital indemnity health insurance policies.

SEC. 61. Section 10169 of the Insurance Code is amended to read:

10169. (a) Commencing January 1, 2001, there is hereby established in the department the Independent Medical Review System.

(b) For the purposes of this chapter, ''disputed health care service'' means any health care service eligible for coverage and payment under a disability insurance contract that has been denied, modified, or delayed by a decision of the insurer, or by one of its contracting providers, in whole or in part due to a finding that the service is not medically necessary. A decision regarding a disputed health care service relates to the practice of medicine and is not a coverage decision. A disputed health care service does not include services provided by a group or individual policy of vision-only or dental-only coverage, except to the extent that (1) the service involves the practice of medicine, or (2) is provided pursuant to a contract with a disability insurer that covers hospital, medical, or surgical benefits. If an insurer, or one of its contracting providers, issues a decision denying, modifying, or delaying health care services, based in whole or in part on a finding that the proposed health

care services are not a covered benefit under the contract that applies to the insured, the statement of decision shall clearly specify the provision in the contract that excludes that coverage.

(c) For the purposes of this chapter, ''coverage decision'' means the approval or denial of health care services by a disability insurer, or by one of its contracting entities, substantially based on a finding that the provision of a particular service is included or excluded as a covered benefit under the terms and conditions of the disability insurance contract. A coverage decision does not encompass a disability insurer or contracting provider decision regarding a disputed health care service.

(d) (1) All insured grievances involving a disputed health care service are eligible for review under the Independent Medical Review System if the requirements of this article are met. If the department finds that an insured grievance involving a disputed health care service does not meet the requirements of this article for review under the Independent Medical Review System, the insured request for review shall be treated as a request for the department to review the grievance. All other insured grievances, including grievances involving coverage decisions, remain eligible for review by the department.

(2) In any case in which an insured or provider asserts that a decision to deny, modify, or delay health care services was based, in whole or in part, on consideration of medical necessity, the department shall have the final authority to determine whether the grievance is more properly resolved pursuant to an independent medical review as provided under this article.

(3) The department shall be the final arbiter when there is a question as to whether an insured grievance is a disputed health care service or a coverage decision. The department shall establish a process to complete an initial screening of an insured grievance. If there appears to be any medical necessity issue, the grievance shall be resolved pursuant to an independent medical review as provided under this article.

(e) Every disability insurance contract that is issued, amended, renewed, or delivered in this state on or after January 1, 2000, shall, effective, January 1, 2001, provide an insured with the opportunity to seek an independent medical review whenever health care services have been denied, modified, or delayed by the insurer, or by one of its contracting providers, if the decision was based in whole or in part on a finding that the proposed health care services are not medically necessary. For purposes of this article, an insured may designate an agent to act on his or her behalf. The provider may join with or otherwise assist the insured in seeking an independent medical review, and may advocate on behalf of the insured.

(f) Medicare beneficiaries enrolled in Medicare + Choice products shall not be excluded unless expressly preempted by federal law.

(g) The department may seek to integrate the quality of care and consumer protection provisions, including remedies, of the Independent Medical Review System with related dispute resolution procedures of other health care agency programs, including the Medicare program, in a way that minimizes the potential for duplication, conflict, and added costs. Nothing in this subdivision shall be construed to limit any rights conferred upon insureds under this chapter.

(h) The independent medical review process authorized by this article is in addition to any other procedures or remedies that may be available.

(i) No later than January 1, 2001, every disability insurer shall prominently display in every insurer member handbook or relevant informational brochure, in every insurance contract, on insured evidence of coverage forms, on copies of insurer procedures for resolving grievances, on letters of denials issued by either the insurer or its contracting organization, and on all written responses to grievances, information concerning the right of an insured to request an independent medical review in cases where the insured believes that health care services have been improperly denied, modified, or delayed by the insurer, or by one of its contracting providers.

(j) An insured may apply to the department for an independent medical review when all of the following conditions are met:

(1) (A) The insured's provider has recommended a health care service as medically necessary, or

(B) The insured has received urgent care or emergency services that a provider determined was medically necessary, or

(C) The insured, in the absence of a provider recommendation under subparagraph (A) or the receipt of urgent care or emergency services by a provider under subparagraph (B), has been seen by a contracting provider for the diagnosis or treatment of the medical condition for which the insured seeks independent review. The insurer shall expedite access to a contracting provider upon request of an insured. The contracting provider need not recommend the disputed health care service as a condition for the insured to be eligible for an independent review.

For purposes of this article, the insured's provider may be a noncontracting provider. However, the insurer shall have no liability for payment of services provided by a noncontracting provider, except as provided pursuant to Section 10169.3.

(2) The disputed health care service has been denied, modified, or delayed by the insurer, or by one of its contracting providers, based in whole or in part on a decision that the health care service is not medically necessary.

(3) The insured has filed a grievance with the insurer or its contracting provider, and the disputed decision is upheld or the grievance remains

unresolved after 30 days. The insured shall not be required to participate in the insurer's grievance process for more than 30 days. In the case of a grievance that requires expedited review, the insured shall not be required to participate in the insurer's grievance process for more than three days.

(k) An insured may apply to the department for an independent medical review of a decision to deny, modify, or delay health care services, based in whole or in part on a finding that the disputed health care services are not medically necessary, within six months of any of the qualifying periods or events under subdivision (j). The commissioner may extend the application deadline beyond six months if the circumstances of a case warrant the extension.

(*l*) The insured shall pay no application or processing fees of any kind.

(m) As part of its notification to the insured regarding a disposition of the insured's grievance that denies, modifies, or delays health care services, the insurer shall provide the insured with a one-page application form approved by the department, and an addressed envelope, which the insured may return to initiate an independent medical review. The insurer shall include on the form any information required by the department to facilitate the completion of the independent medical review, such as the insured's diagnosis or condition, the nature of the disputed health care service sought by the insured, a means to identify the insured's case, and any other material information. The form shall also include the following:

(1) Notice that a decision not to participate in the independent review process may cause the insured to forfeit any statutory right to pursue legal action against the insurer regarding the disputed health care service.

(2) A statement indicating the insured's consent to obtain any necessary medical records from the insurer, any of its contracting providers, and any noncontracting provider the insured may have consulted on the matter, to be signed by the insured.

(3) Notice of the insured's right to provide information or documentation, either directly or through the insured's provider, regarding any of the following:

(A) A provider recommendation indicating that the disputed health care service is medically necessary for the insured's medical condition.

(B) Medical information or justification that a disputed health care service, on an urgent care or emergency basis, was medically necessary for the insured's medical condition.

(C) Reasonable information supporting the insured's position that the disputed health care service is or was medically necessary for the insured's medical condition, including all information provided to the

insured by the insurer or any of its contracting providers, still in the possession of the insured, concerning an insurer or provider decision regarding disputed health care services, and a copy of any materials the insured submitted to the insurer, still in the possession of the insured, in support of the grievance, as well as any additional material that the insured believes is relevant.

(n) Upon notice from the department that the insured has applied for an independent medical review, the insurer or its contracting providers, shall provide to the independent medical review organization designated by the department a copy of all of the following documents within three business days of the insurer's receipt of the department's notice of a request by an insured for an independent review:

(1) (A) A copy of all of the insured's medical records in the possession of the insurer or its contracting providers relevant to each of the following:

(i) The insured's medical condition.

(ii) The health care services being provided by the insurer and its contracting providers for the condition.

(iii) The disputed health care services requested by the insured for the condition.

(B) Any newly developed or discovered relevant medical records in the possession of the insurer or its contracting providers after the initial documents are provided to the independent medical review organization shall be forwarded immediately to the independent medical review organization. The insurer shall concurrently provide a copy of medical records required by this subparagraph to the insured or the insured's provider, if authorized by the insured, unless the offer of medical records is declined or otherwise prohibited by law. The confidentiality of all medical record information shall be maintained pursuant to applicable state and federal laws.

(2) A copy of all information provided to the insured by the insurer and any of its contracting providers concerning insurer and provider decisions regarding the insured's condition and care, and a copy of any materials the insured or the insured's provider submitted to the insurer and to the insurer's contracting providers in support of the insured's request for disputed health care services. This documentation shall include the written response to the insured's grievance. The confidentiality of any insured medical information shall be maintained pursuant to applicable state and federal laws.

(3) A copy of any other relevant documents or information used by the insurer or its contracting providers in determining whether disputed health care services should have been provided, and any statements by the insurer and its contracting providers explaining the reasons for the decision to deny, modify, or delay disputed health care services on the

basis of medical necessity. The insurer shall concurrently provide a copy of documents required by this paragraph, except for any information found by the commissioner to be legally privileged information, to the insured and the insured's provider. The department and the independent review organization shall maintain the confidentiality of any information found by the commissioner to be the proprietary information of the insurer.

SEC. 62. Section 10169.2 of the Insurance Code is amended to read:

10169.2. (a) By January 1, 2001, the department shall contract with one or more independent medical review organizations in the state to conduct reviews for purposes of this article. The independent medical review organizations shall be independent of any disability insurer doing business in this state. The commissioner may establish additional requirements, including conflict-of-interest standards, consistent with the purposes of this article, that an organization shall be required to meet in order to qualify for participation in the Independent Medical Review System and to assist the department in carrying out its responsibilities.

(b) The independent medical review organizations and the medical professionals retained to conduct reviews shall be deemed to be medical consultants for purposes of Section 43.98 of the Civil Code.

(c) The independent medical review organization, any experts it designates to conduct a review, or any officer, director, or employee of the independent medical review organization shall not have any material professional, familial, or financial affiliation, as determined by the commissioner, with any of the following:

(1) The insurer.

(2) Any officer, director, or employee of the insurer.

(3) A physician, the physician's medical group, or the independent practice association involved in the health care service in dispute.

(4) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the insurer, would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the insured whose treatment is under review, or the alternative therapy, if any, recommended by the insurer.

(6) The insured or the insured's immediate family.

(d) In order to contract with the department for purposes of this article, an independent medical review organization shall meet all of the following requirements:

(1) The organization shall not be an affiliate or a subsidiary of, nor in any way be owned or controlled by, a disability insurer or a trade association of insurers. A board member, director, officer, or employee of the independent medical review organization shall not serve as a board

member, director, or employee of a disability insurer. A board member, director, or officer of a disability insurer or a trade association of insurers shall not serve as a board member, director, officer, or employee of an independent medical review organization.

(2) The organization shall submit to the department the following information upon initial application to contract for purposes of this article and, except as otherwise provided, annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent medical review organization controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent medical review organization, as well as a statement regarding any past or present relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group, or board or committee of an insurer, a plan, a managed care organization, or a provider group.

(E) (i) The percentage of revenue the independent medical review organization receives from expert reviews, including, but not limited to, external medical reviews, quality assurance reviews, and utilization reviews.

(ii) The names of any insurer or provider group for which the independent medical review organization provides review services, including, but not limited to, utilization review, quality assurance review, and external medical review. Any change in this information shall be reported to the department within five business days of the change.

(F) A description of the review process including, but not limited to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent medical review organization uses to identify and recruit medical professionals to review treatment and treatment recommendation decisions, the number of medical professionals credentialed, and the types of cases and areas of expertise that the medical professionals are credentialed to review.

(H) A description of how the independent medical review organization ensures compliance with the conflict-of-interest provisions of this section.

(3) The organization shall demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the medical professionals retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions and the medical necessity of treatments or therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensures the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensures adequate screening for conflicts-of-interest, pursuant to paragraph (5).

(4) Medical professionals selected by independent medical review organizations to review medical treatment decisions shall be physicians or other appropriate providers who meet the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the insured's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other provision of law, the medical professional shall hold a nonrestricted license in the any state of the United States, and for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. The independent medical review organization shall give preference to the use of a physician licensed in California as the reviewer, except when training and experience with the issue under review reasonably requires the use of an out-of-state reviewer.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(5) Neither the expert reviewer, nor the independent medical review organization, shall have any material professional, material familial, or material financial affiliation with any of the following:

(A) The disability insurer or a provider group of the insurer, except that an academic medical center under contract to the insurer to provide services to insureds may qualify as an independent medical review organization provided it will not provide the service and provided the center is not the developer or manufacturer of the proposed treatment.

(B) Any officer, director, or management employee of the insurer.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the treatment.

(D) The institution at which the treatment would be provided.

(E) The development or manufacture of the treatment proposed for the insured whose condition is under review.

(F) The insured or the insured's immediate family.

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

(A) ''Material familial affiliation'' means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) ''Material professional affiliation'' means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent medical review organization. ''Material professional affiliation'' does not include affiliations that are limited to staff privileges at a health facility.

(C) ''Material financial affiliation'' means any financial interest of more than 5 percent of total annual revenue or total annual income of an independent medical review organization or individual to which this subdivision applies. ''Material financial affiliation'' does not include payment by the insurer to the independent medical review organization for the services required by this section, nor does ''material financial affiliation'' include an expert's participation as a contracting provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(e) The department shall provide, upon the request of any interested person, a copy of all nonproprietary information, as determined by the commissioner, filed with it by an independent medical review organization seeking to contract under this article. The department may charge a nominal fee to the interested person for photocopying the requested information.

(f) The commissioner may contract with the Department of Managed Health Care to administer the independent medical review process established by this article.

SEC. 63. Section 10169.3 of the Insurance Code is amended to read:

10169.3. (a) Upon receipt of information and documents related to a case, the medical professional reviewer or reviewers selected to conduct the review by the independent medical review organization shall promptly review all pertinent medical records of the insured, provider reports, as well as any other information submitted to the organization as authorized by the department or requested from any of the parties to the dispute by the reviewers. If reviewers request information from any of the parties, a copy of the request and the response shall be provided to all of the parties. The reviewer or reviewers shall also review relevant information related to the criteria set forth in subdivision (b).

(b) Following its review, the reviewer or reviewers shall determine whether the disputed health care service was medically necessary based on the specific medical needs of the insured and any of the following:

(A) Peer-reviewed scientific and medical evidence regarding the effectiveness of the disputed service.

(B) Nationally recognized professional standards.

(C) Expert opinion.

(D) Generally accepted standards of medical practice.

(E) Treatments that are likely to provide a benefit to a patient for conditions for which other treatments are not clinically efficacious.

(c) The organization shall complete its review and make its determination in writing, and in layperson's terms to the maximum extent practicable, within 30 days of the receipt of the application for review and supporting documentation, or within less time as prescribed by the commissioner. If the disputed health care service has not been provided and the insured's provider or the department certifies in writing that an imminent and serious threat to the health of the insured may exist, including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the health of the insured, the analyses and determinations of the reviewers shall be expedited and rendered within three days of the receipt of the information. Subject to the approval of the department, the deadlines for analyses and determinations involving both regular and expedited reviews may be extended by the commissioner for up to three days in extraordinary circumstances or for good cause.

(d) The medical professionals' analyses and determinations shall state whether the disputed health care service is medically necessary. Each analysis shall cite the insured's medical condition, the relevant documents in the record, and the relevant findings associated with the provisions of subdivision (b) to support the determination. If more than one medical professional reviews the case, the recommendation of the majority shall prevail. If the medical professionals reviewing the case are

evenly split as to whether the disputed health care service should be provided, the decision shall be in favor of providing the service.

(e) The independent medical review organization shall provide the director, the insurer, the insured, and the insured's provider with the analyses and determinations of the medical professionals reviewing the case, and a description of the qualifications of the medical professionals. The independent medical review organization shall keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization, except in cases where the reviewer is called to testify and in response to court orders. If more than one medical professional reviewed the case and the result was differing determinations, the independent medical review organization shall provide each of the separate reviewer's analyses and determinations.

(f) The commissioner shall immediately adopt the determination of the independent medical review organization, and shall promptly issue a written decision to the parties that shall be binding on the insurer.

(g) After removing the names of the parties, including, but not limited to, the insured, all medical providers, the insurer, and any of the insurer's employees or contractors, commissioner decisions adopting a determination of an independent medical review organization shall be made available by the department to the public upon request, at the department's cost and after considering applicable laws governing disclosure of public records, confidentiality, and personal privacy.

SEC. 64. Section 10169.5 of the Insurance Code is amended to read:

10169.5. (a) After considering the results of a competitive bidding process and any other relevant information on program costs, the commissioner shall establish a reasonable, per-case reimbursement schedule to pay the costs of independent medical review organization reviews, which may vary depending on the type of medical condition under review and on other relevant factors.

(b) The costs of the independent medical review system for insureds shall be borne by disability insurers pursuant to an assessment fee system established by the commissioner. In determining the amount to be assessed, the commissioner shall consider all appropriations available for the support of this article, and existing fees paid to the department. The commissioner may adjust fees upward or downward, on a schedule set by the department, to address shortages or overpayments, and to reflect utilization of the independent review process.

(c) The commissioner may contract with the Department of Managed Health Care to administer the requirements of this article.

SEC. 65. Section 10196 of the Insurance Code is amended to read:

10196. (a) The commissioner, with the advice of the Department of Managed Health Care, shall prepare a guide that explains the factors to be considered in selecting long-term care insurance and the consequences of particular clauses and exclusions. The guide shall be made available to the public and to interested organizations upon request. Any advertisement in this state dealing with long-term care insurance shall include notice of availability of this guide from the commissioner.

(b) For purposes of this section, ''long-term care insurance'' means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. ''Long-term care insurance'' does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, or specified disease or accident coverage.

SEC. 66. Section 10270.98 of the Insurance Code is amended to read:

10270.98. Group disability policies may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage (other than individual policies or contracts) providing hospital, surgical or medical benefits, whether on an indemnity basis or a provision of service basis, resulting in such insured being eligible for more than 100 percent of the covered expenses.

Except as permitted by this section and by Section 10323, 10369.5, 10369.6, or 11515.5, and except in the case of group practice prepayment plan contracts which do not provide for coordination of benefits, to the extent they provide for a reduction of benefits on account of other coverage with respect to emergency services that are not obtained from providers that contract with the plan, no group or individual disability insurance policy or service contract issued by nonprofit hospital service plans operating under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 shall limit payment of benefits by reason of the existence of other insurance or service coverage.

The policy provisions authorized by this section shall contain a provision that payments of funds may be made directly between insurers and other providers of benefits. Such policy provisions shall also contain a provision that if benefits are provided in the form of services rather than cash payments the reasonable cash value of each service rendered shall

be deemed to be both an allowable expense and a benefit paid. The reasonable cash value of any contractual benefit provided to the insured in the form of service rather than cash payment by or through any hospital service organization or medical service organization or group-practice prepayment plan shall be deemed an expense incurred by the insured for such service, whether or not actually incurred, and the liability of the insurer shall be the same as if the insured had not been entitled to any such service benefit, unless the policy contains a provision authorized by Section 10323, 10369.5 or 10369.6 in the case of an individual disability policy, or by this section, in the case of a group disability policy.

This section shall not be construed to require that benefits payable under group disability policies be subject to reduction by the benefit amounts payable under Chapter 3 (commencing with Section 2800) of Part 2 of Division 1 of the Unemployment Insurance Code.

The provisions of this section, and all regulations adopted pursuant thereto pertaining to coordination of benefits with other group disability benefits, shall apply to all employers, labor-management trustee plans, union welfare plans (including those established in conformity with 29 U.S.C. Sec. 186), employer organization plans or employee benefit organization plans, health care service plan contracts, pursuant to regulations adopted by the Director of the Department of Managed Health Care which shall be uniform with those issued under this section for those plans that elect to coordinate benefits, group practice, individual practice, any other prepayment coverage for medical or dental care or treatment, and administrators, within the meaning of Section 1759 not otherwise subject to the provisions of this section whenever such plan, contract or practice provides or administers hospital, surgical, medical or dental benefits to employees or agents who are also covered under one or more additional group disability policies which are subject to this section or health care service plans.

SEC. 67. Section 10704 of the Insurance Code is amended to read:

10704. The commissioner may issue regulations that are necessary to carry out the purposes of this chapter. Prior to the public comment period required on the regulations under the Administrative Procedure Act, the commissioner shall provide the Director of the Department of Managed Health Care with a copy of the proposed regulations. The Director of the Department of Managed Health Care shall have 30 days to notify the commissioner in writing of any comments on the regulations. The Director of the Department of Managed Health Care's comments shall be included in the public notice issued on the regulations. Any rules and regulations issued pursuant to this subdivision may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Until December 31, 1994, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The regulations shall be enforced by the director.

SEC. 68. Section 10733 of the Insurance Code is amended to read:

10733. On or after the effective date of this chapter, the board shall enter into contracts with carriers for the purpose of providing health benefits coverage to eligible employees and dependents. Participating carriers shall have, but need not be limited to, all of the following operating characteristics satisfactory to the board:

(a) Strong financial condition, including the ability to assume the risk of providing and paying for covered services. A participating carrier may utilize reinsurance, provider risk sharing, and other appropriate mechanisms to share a portion of the risk.

(b) Adequate administrative management.

(c) In the case of the health care service plan, the following requirements must be met: (1) on the effective date of the contract, the health care service plan must be in compliance with the minimum tangible net equity requirements of the Director of the Department of Managed Health Care as those requirements will be in effect on January 1, 1995, and must remain in compliance with these requirements throughout the duration of the contract; (2) (A) before the effective date of the contract, the health care service plan must have devised a system for identifying in a simple and clear fashion both in its own records and in the medical records of subscribers and enrollees the fact that the services provided are provided under the program; and (B) throughout the duration of the contract, the health care service plan must use that system; and (3) at least 30 days before the effective date of any contract with the board, the health care service plan must inform the Director of the Department of Managed Health Care in writing of the health care service plan's intent to enter into the contract and must demonstrate in that letter, to the satisfaction of the Director of the Department of Managed Health Care, that it has complied with the requirements of paragraphs (1) and (2).

(d) A satisfactory grievance procedure.

(e) Participating carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the board, in consultation with the carrier's licensing agency.

(1) Review the quality of care covered.

(2) Review the appropriateness of care covered.

(3) Provide accessible health care services.

SEC. 69. Section 10734 of the Insurance Code is amended to read:

10734. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care, as the case may be.

(b) Participating carriers that contract with the program shall be licensed and in good standing with their licensing agencies.

SEC. 70. Section 10810 of the Insurance Code is amended to read:

10810. As used in this chapter:

(a) ''Ancillary benefit plan'' means a policy or contract written or administered by a participating carrier that covers dental or vision benefits for the covered eligible employees of an employer or small employer and their dependents.

(b) ''Appropriate Regulatory Authority'' means the Department of Insurance except for health care service plans, in which case it means the Department of Managed Health Care.

(c) ''Benefit plan design'' means a specific health coverage product issued by a carrier to employers or small employers, to trustees of associations, or to individuals if the coverage is offered through employment or sponsored by an employer or small employer. It includes the services covered and the levels of copayment and deductibles.

(d) ''Board'' means the governing body of the purchasing alliance. This term shall include the board of directors of a nonprofit corporation or trust, a for-profit corporation, the general partners of a partnership, or a sole proprietor.

(e) ''Carrier'' means any licensed disability insurance company or licensed health care service plan or any other entity that writes, issues, or administers any health benefit plan or ancillary benefit plan to employers or small employers in this state.

(f) ''Commissioner'' means the Insurance Commissioner, who shall have regulatory jurisdiction over purchasing alliances.

(g) ''Dependent'' has the same meaning as in the subdivision (a) of Section 1357 of the Health and Safety Code and in subdivision (e) of Section 10700 of this code.

(h) ''Eligible employee'' means any permanent employee who is actively engaged on a full-time basis in the conduct of business of the employer or small employer and, who has satisfied any employer or small employer waiting period requirements. The term includes sole proprietors or partners of a partnership if they are actively engaged on a full-time basis in the employer's or small employer's business, but does not include employees who work on a part-time, temporary, or substitute basis.

(i) ''Employer'' means any corporation, partnership, sole proprietorship, or other business entity doing business in this state that may be eligible to participate in a purchasing alliance. The term

''employer'' shall not include ''small employer'' as defined in subdivision (s).

(j) ''Enrollee'' means an eligible employee or a dependent of an eligible employee who is enrolled in a health benefit plan or ancillary benefit plan offered through the purchasing alliance by a participating carrier.

(k) ''Health benefit plan'' means a policy or contract written or administered by a participating carrier that arranges or provides health care benefits for the covered eligible employees of an employer or small employer and their dependents. The term does not include accident only, credit, dental, vision, disability income, or long-term care insurance, coverage issued as a supplement to liability insurance, automobile medical payments insurance, or insurance under which benefits are payable with or without regard to fault and is statutorily required to be continued in any liability insurance policy or equivalent self-insurance.

(*l*) ''Management company'' means the company under contract to the purchasing alliance to provide managerial services for the operation of the purchasing alliance.

(m) ''Participating carrier'' means a carrier that contracts with a purchasing alliance to provide coverage to enrollees under a health benefit plan or ancillary benefit plan.

(n) ''Participating employer'' means an employer or small employer who contracts with a purchasing alliance to provide coverage to the employer's or small employer's employees.

(o) ''Purchasing alliance'' means a non-risk-bearing entity issued a certificate of registration pursuant to this chapter to provide health benefits through multiple unaffiliated participating carriers to multiple participating employers, small employers and their employees within this state as authorized by the commissioner. That entity shall include nonprofit corporations, for-profit corporations, trusts, partnerships, and sole proprietorships.

(p) ''Risk adjustment factor'' for small employer benefit plan designs and contracts has the same meaning as in subdivision (j) of Section 1357 of the Health and Safety Code and in subdivision (u) of Section 10700 of this code.

(q) ''Service region'' means that portion of the state, designated by the commissioner pursuant to regulations as described in this chapter in which each purchasing alliance must fairly and affirmatively offer, market, and sell all of the health benefit plan designs offered through the purchasing alliance that are sold or offered to a small employer to all small employers.

(r) ''Small employer'' has the same meaning as in paragraph (1) of subdivision (*l*) of Section 1357 of the Health and Safety Code and in paragraph (1) of subdivision (w) of Section 10700 of this code.

(s) ''Third-party administrator'' means the company contracted by the purchasing alliance to provide administrative services for the purchasing alliance and that is licensed to provide those services by the department pursuant to Section 1759.10.

SEC. 71. Section 10820 of the Insurance Code is amended to read:

10820. (a) The commissioner shall regulate the establishment and conduct of purchasing alliances as set forth in this chapter.

(b) No person or entity may market, sell, offer, or contract for a package of one or more health benefit plans underwritten by two or more carriers to two or more employers or small employers or their eligible employees within a purchasing alliance without first being registered by the commissioner pursuant to this chapter. This subdivision does not apply to entities licensed by the Department of Managed Health Care as health care service plans or entities licensed by the Department of Insurance as disability insurers except that no licensed health care service plan or licensed disability insurer may be registered with the commissioner as a purchasing alliance. This chapter does not apply to any entity exempt pursuant to Section 1349.2 of the Health and Safety Code.

(c) A person or entity not registered by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health alliance, health insurance purchasing cooperative, or purchasing cooperative, or otherwise use a confusingly similar name.

(d) The commissioner shall establish six geographic service regions throughout which all purchasing alliances shall operate. These regions shall be established with no region smaller than an area in which the first three digits of all its postal ZIP Codes are in common within a county and shall divide no county into more than two service regions. Geographic service regions established pursuant to this section shall, as a group, cover the entire state, and the areas encompassed in geographic service regions shall be separate and distinct from regions encompassed in other geographic service regions. Geographic service regions may be noncontiguous.

(e) Nothing in this chapter shall be deemed to be in conflict with or limit the duties and powers granted to the commissioner under the laws of this state.

(f) Purchasing alliances shall report to the commissioner any suspected or alleged law violations of this chapter.

(g) Violations of this chapter shall be subject to the penalties outlined hereafter.

(h) The commissioner shall adopt reasonable rules and regulations as are necessary to administer this chapter.

(i) Nothing in this chapter shall be construed or interpreted to apply to an entity that has been approved by the Director of the Department of Managed Health Care, pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, to act as a solicitor and third-party administrator with respect to a multiple carrier or health care service plan marketing cooperative in which each carrier or health care service plan contracts directly with subscribing groups or individuals for the provision of health care, for the arranging for the provision of health care, or for the provision of coverage for health care.

SEC. 72. Section 10856 of the Insurance Code is amended to read:

10856. Nothing in this article shall be construed to limit the existing regulatory authority of the Department of Managed Health Care to regulate health care service plans or of the Department of Insurance to regulate disability or life insurers or hospital service plans. None of the requirements of this article shall conflict with the participating carrier's licensing requirements.

SEC. 73. Section 12693.36 of the Insurance Code is amended to read:

12693.36. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care, as the case may be.

(b) Participating health, dental, and vision plans that contract with the program and are regulated by either the Insurance Commissioner or the Department of Managed Health Care shall be licensed and in good standing with their respective licensing agencies. In their application to the program, those entities shall provide assurance of their standing with the appropriate licensing entity.

(c) Local initiatives that have a contract with the State Department of Health Services, and that contract with the program, and that are licensed by the Department of Managed Health Care but do not have a commercial license from the Department of Managed Health Care, may contract with the board for a maximum of 18 months. During this 18-month period, those plans shall be in good standing with the Department of Managed Health Care and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license with the Department of Managed Health Care. The board may extend this period to 24 months if the board determines the additional time is necessary to comply with this requirement. In their application to the program, those entities shall provide assurance of their standing with the Department of Managed Health Care and shall outline their plans for obtaining commercial licensure.

(d) County organized health systems and the special health care authority established under Section 101675 of the Health and Safety

Code that have a contract with the State Department of Health Services, and that contract with the program, and that are not licensed by either the Insurance Commissioner or the Department of Managed Health Care may contract with the board for a maximum of 24 months. During this 24-month period those plans shall be in good standing with the state agency providing oversight to their operations and shall demonstrate to the board that they are making a good faith effort to obtain licensure with the Department of Insurance or the Department of Managed Health Care. In their application to the program, those entities shall provide assurance of their standing with the appropriate state oversight entity and shall outline their plans for obtaining licensure from the Department of Insurance or the Department of Managed Health Care.

SEC. 74. Section 12693.365 of the Insurance Code is amended to read:

12693.365. Geographic managed care plans that have a contract with the Department of Health Services, that contract with the program, and that are licensed by the Department of Managed Health Care but do not have a commercial license from the Department of Managed Health Care, may contract with the board for a maximum of 12 months. During this 12-month period, those plans shall be required to be in good standing with the Department of Managed Health Care and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license from the Department of Managed Health Care. In their application to the program, those plans shall provide assurance of their standing with the Department of Managed Health Care and shall outline their plans for obtaining commercial licensure.

SEC. 75. Section 12693.37 of the Insurance Code is amended to read:

12693.37. (a) The board shall contract with a broad range of health plans in an area, if available, to ensure that subscribers have a choice from among a reasonable number and types of competing health plans. The board shall develop and make available objective criteria for health plan selection and provide adequate notice of the application process to permit all health plans a reasonable and fair opportunity to participate. The criteria and application process shall allow participating health plans to comply with their state and federal licensing and regulatory obligations, except as otherwise provided in this chapter. Health plan selection shall be based on the criteria developed by the board.

(b) (1) In its selection of participating plans the board shall take all reasonable steps to assure the range of choices available to each applicant, other than a purchasing credit member, shall include plans that include in their provider networks and have signed contracts with traditional and safety net providers.

(2) Participating health plans shall be required to submit to the board on an annual basis a report summarizing their provider network. The report shall provide, as available, information on the provider network as it relates to:

(A) Geographic access for the subscribers.

(B) Linguistic services.

(C) The ethnic composition of providers.

(D) The number of subscribers who selected traditional and safety net providers.

(c) (1) The board shall not rely solely on the Department of Managed Health Care's determination of a health plan network's adequacy or geographic access to providers in the awarding of contracts under this part. The board shall collect and review demographic, census, and other data to provide to prospective local initiatives, health plans, or specialized health plans, as defined in this act, specific provider contracting target areas with significant numbers of uninsured children in low-income families. The board shall give priority to those plans, on a county-by-county basis, that demonstrate that they have included in their prospective plan networks significant numbers of providers in these geographic areas.

(2) Targeted contracting areas are those ZIP Codes or groups of ZIP Codes or census tracts or groups of census tracts that have a percentage of uninsured children in low-income families greater than the overall percentage of uninsured children in low-income families in that county.

(d) In each geographic area, the board shall designate a community provider plan that is the participating health plan which has the highest percentage of traditional and safety net providers in its network. Subscribers selecting such a plan shall be given a family contribution discount as described in Section 12693.43.

(e) The board shall establish reasonable limits on health plan administrative costs.

SEC. 76. Section 12695.18 of the Insurance Code is amended to read:

12695.18. ''Participating health plan'' means any of the following plans which are lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health care services under insurance policies or contracts, medical and hospital service arrangements, or membership contracts, in consideration of premiums or other periodic charges payable to it, and that contracts with the program to provide coverage to program subscribers:

(a) A private insurer holding a valid outstanding certificate of authority from the Insurance Commissioner.

(b) A nonprofit hospital service plan qualifying under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2.

(c) A nonprofit membership corporation lawfully operating under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code).

(d) A health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code.

(e) A county or a city and county, in which case no license or approval from the Department of Insurance or the Department of Managed Health Care shall be required to meet the requirements of this part.

(f) A comprehensive primary care licensed community clinic that is an organized outpatient freestanding health facility and is not part of a hospital that delivers comprehensive primary care services, in which case, no license or approval from the Department of Insurance or the Department of Managed Health Care shall be required to meet the requirements of this part.

SEC. 77. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Managed Health Care and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to

work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Managed Health Care in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial

solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising, disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or

records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Corporations on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Corporations under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Corporations shall provide complete files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Managed Health Care, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(*l*) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for

chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for

acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 78. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs shall designate as peace officers seven persons who shall at the time of their designation be assigned to the investigations unit of the Board of Dental Examiners.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of

Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any

other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with

Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 79. Section 5777 of the Welfare and Institutions Code is amended to read:

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal

beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulation.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Contract renewal shall be on an annual basis. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under subdivision (r) of Section 5778, if any change in obligations occurs that affects the cost to the mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan under Section 5778, if the mental health plan is reimbursed through a fee-for-service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Director of the Department of Managed Health Care may exempt a mental health plan contractor or a capitated rate contract from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder. The Director of Mental Health, in consultation with the Director of the Department of Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health

subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

SEC. 80. Section 9541 of the Welfare and Institutions Code is amended to read:

9541. (a) The Legislature finds and declares that the purpose of the Health Insurance Counseling and Advocacy Program is to provide Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy as to Medicare, private health insurance, and related health care coverage plans, on a statewide basis, and preserving service integrity.

(b) The department shall be responsible for, but not limited to, doing both of the following:

(1) To act as a clearinghouse for information and materials relating to Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans.

(2) To develop additional information and materials relating to Medicare, managed care, and health and long-term care related life and disability insurance, and related health care coverage plans, as necessary.

(c) Notwithstanding the terms and conditions of the contracts, direct services contractors shall be responsible for, but not limited to, all of the following:

(1) Community education to the public on Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(2) Counseling and informal advocacy with respect to Medicare, long-term care planning, private health and long-term care insurance, managed care, and related health care coverage plans.

(3) Referral services for legal representation or legal representation with respect to Medicare appeals, Medicare related managed care appeals, and life and disability insurance problems. Legal services provided under this program shall be subject to the understanding that the legal representation and legal advocacy shall not include the filing of lawsuits against private insurers or managed health care plans. In the event that legal services are contracted for by the agency separately from counseling and education services, a formal system of coordination and referral from counseling services to legal services shall be established and maintained.

(4) Educational services supporting long-term care educational activities aimed at the general public, employers, employee groups, senior organizations, and other groups expressing interest in long-term care planning issues.

(5) Educational services emphasizing the importance of long-term care planning, promotion of self-reliance and independence, and options for long-term care.

(6) To the extent possible, support additional emphasis on community educational activities that would provide for announcements on television and in other media describing the limited nature of Medicare, the need for long-term care planning, the function of long-term care insurance, and the availability of counseling and educational literature on those subjects.

(7) Recruitment, training, coordination, and registration, with the department, of health insurance counselors, including a large contingent of volunteer counselors designed to expand services as broadly as possible.

(8) A systematic means of capturing and reporting all required community-based services program data, as specified by the department.

(d) Participants who volunteer their time for the health insurance counseling and advocacy program may be reimbursed for expenses incurred, as specified by the department.

(e) The department, the Department of Managed Health Care, and the Department of Insurance shall jointly develop interagency procedures for referring and investigating suspected instances of misrepresentation in advertising or sales of services provided by Medicare, managed health care plans, and life and disability insurers and agents.

(f) (1) No health insurance counselor shall provide counseling services under this chapter, unless he or she is registered with the department.

(2) No registered volunteer health insurance counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No immunity shall apply to health insurance counselors for any grossly negligent act or omission or intentional misconduct.

(3) No registered volunteer health insurance counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situated person, for defamation, trade libel, slander, or similar actions based on statements made by the counselor when providing counseling, unless a statement was made with actual malice.

(4) Prior to providing any counseling services, health insurance counselors shall disclose, in writing, to recipients of counseling services pursuant to this chapter that the counselors are acting in good faith to provide information about health insurance policies and benefits on a volunteer basis, but that the information shall not be construed to be legal advice, and that the counselors are, generally, not liable unless their acts and omissions are grossly negligent or there is intentional misconduct on the part of the counselor.

(5) The department shall not register any applicant under this section unless he or she has completed satisfactorily training which is approved

by the department, and which shall consist of not less than 24 hours of training that shall include, but is not limited to, all of the following subjects:

(A) Medicare.

(B) Life and disability insurance.

(C) Managed care.

(D) Retirement benefits and principles of long-term care planning.

(E) Counseling skills.

(F) Any other subject or subjects determined by the department to be necessary to the provision of counseling services under this chapter.

(6) The department shall not register any applicant under this section unless he or she has completed all training requirements and has served an internship of cocounseling of not less than 10 hours with an experienced counselor and is determined by the local program manager to be capable of discharging the responsibilities of a counselor. An applicant shall sign a conflict of interest and confidentiality agreement, as specified by the department.

(7) A counselor shall not continue to provide health insurance counseling services unless he or she has received continuing education and training, in a manner prescribed by the department, on Medicare, managed care, life and disability insurance, and other subjects during each calendar year.

SEC. 81. Section 14087.32 of the Welfare and Institutions Code is amended to read:

14087.32. (a) Commencing on the date the authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until a commission established pursuant to Section 14087.31 is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, all of the following shall apply:

(1) The commission may select and design its automated management information system. The department, in cooperation with the commission, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other health care service plans.

(2) In addition to the reports required by the Department of Managed Health Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, a commission established pursuant to Section 14087.31 shall provide, on a monthly basis, to the department, the Department of Managed Health

Care, and the members of the commission, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets of liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association or community clinic, which has contracted with the authority to provide health care services.

(3) In addition to the reporting and notification obligations the commission has under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Managed Health Care, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations to health care providers or to other parties. The written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions which will be taken to address the anticipated consequences.

(4) The Department of Managed Health Care shall not, in any way, waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, after three years from the date of commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Health Care adopted thereunder, the commission shall develop a stop-loss program appropriate to the risks of the commission, which program shall be satisfactory to both department and the Department of Managed Health Care.

(5) (A) If the commission votes to file a petition of bankruptcy, or the county board of supervisors notifies the department of its intent to terminate the commission, the department shall immediately transfer the authority's Medi-Cal beneficiaries as follows:

(i) To other managed care contractors, when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(ii) To the extent that other managed care contractors are unavailable or the department determines that it is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system

pending the availability of managed care contractors provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary.

(B) Beneficiary eligibility for Medi-Cal shall not be affected by actions taken pursuant to subparagraph (A).

(C) Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) (A) A commission established pursuant to Section 14087.31 shall submit to a review of financial records when the department determines, based on data reported by the commission or otherwise, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. Where the review of financial records determines that the commission will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the state, and immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers.

(B) The action of the Director of Health Services pursuant to subparagraph (A) shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action.

(C) Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a matter that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Director of the Department Managed Health Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care service plan to comply with the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and the rules of the Director of the Department of Managed Health Care adopted thereunder.

(10) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the Public Records Act (Chapter 5 (commencing with Section 65250) of Division 7 of Title 1 of the Government Code), including but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce or submit pursuant to this section.

SEC. 82. Section 14087.36 of the Welfare and Institutions Code is amended to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) ''County'' means the City and County of San Francisco.

(2) ''Board'' means the Board of Supervisors of the City and County of San Francisco.

(3) ''Department'' means the State Department of Health Services.

(4) ''Governing body'' means the governing body of the health authority.

(5) ''Health authority'' means the separate public agency established by the board of supervisors to operate a health care system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions

acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties, privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) (1) (A) The health authority shall be considered a public entity separate and distinct from the county and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, ''employee'' shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for

health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter 18 (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall report its findings to the county and to the Department of Managed Health Care within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Managed Health Care within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if no such successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St. Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic

consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years. Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body. This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs (F) and (G) of paragraph (1) of subdivision (k) represent and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, or within the meaning of conflict-of-interest restrictions in the county charter, if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the health county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and to contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(z) Contracts under this article between the State Department of Health Services and the health authority shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(aa) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county controller or designee to perform the activities authorized by this subdivision.

(bb) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 83. Section 14087.37 of the Welfare and Institutions Code is amended to read:

14087.37. Commencing on the date that a health authority established pursuant to Section 14087.35 or 14087.36 first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(a) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(b) In addition to the reports required by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Health Care, and the members of the health authority, a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(c) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Health Care, and the members of the health authority in writing of any fact or facts that, in the chief executive officers' or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(d) The Department of Managed Health Care shall not waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Health Care.

(e) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the health authority's Medi-Cal beneficiaries to either of the following:

(1) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(2) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(f) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care

services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with subdivision (e) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under subdivision (e) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(g) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(h) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(i) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder.

SEC. 84. Section 14087.38 of the Welfare and Institutions Code is amended to read:

14087.38. (a) (1) In counties selected by the director with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency. Nothing in this section shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those provided for in this section,

including, but not limited to, the establishment of a public benefit corporation as set forth in Section 5110 of the Corporations Code.

(2) For purposes of this section ''health authority'' means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(b) The board of supervisors of a county described in subdivision (a) may, by ordinance, establish a health authority to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) The enabling ordinance shall specify the membership of the governing board of the health authority, the qualifications for individual members, the manner of appointment, selection, or removal of board members, and how long they shall serve, and any other matters the board of supervisors deems necessary or convenient for the conduct of the health authority's activities. Members of the governing board shall be appointed by the board of supervisors to represent the interests of the county, the general public, beneficiaries, physicians, hospitals, clinics, and other nonphysician health care providers. The health authority so established shall be considered an entity separate from the county, shall file a statement required by Section 53051 of the Government Code, and shall have the power to acquire, possess, and dispose of real or personal property, as necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a health authority, statutory, contractual, or otherwise, shall be obligations solely of the health authority and shall not be the obligations of the county or of the state.

(d) Upon creation, the health authority may borrow from the county, and the county may lend the health authority funds or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163, and the health authority shall be considered to have satisfied the requirements of that subdivision.

(f) The health authority shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(g) It is the intent of the Legislature that if a health authority is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the health authority for contracts to provide health care services. Nothing in this subdivision shall be construed to interfere with or limit the health authority in giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured individuals.

(h) Notwithstanding any other provisions of law, a member of the governing board of the health authority shall not be deemed to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(1) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations, or beneficiaries.

(2) The contract authorizes the member or the organization the member represents to provide services to beneficiaries under the health authority's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(5) The member discloses the interest to the health authority and abstains from voting on the contract.

(6) The governing board notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(i) All claims for money or damages against the health authority shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the health authority.

(j) The health authority, members of its governing board, and its employees, are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title

1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the health authority.

(k) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the health authority.

(*l*) The transfer of responsibility for health care services to the health authority shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(m) Notwithstanding any other provision of law, the governing board of the health authority may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.

(n) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of law, any peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. Any such peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(o) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the health authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(p) Notwithstanding the California Public Records Act, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part

1 of Division 2 of Title 5 of, the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, shall not be required to be disclosed. The records and proceedings of any such peer review body and its individual members shall receive, to the fullest extent, all immunities, privileges, and protections available to those records and proceedings, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(q) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act, including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the health authority is required to prepare, produce, or submit pursuant to this section.

(r) (1) Any health authority formed pursuant to this section shall obtain licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code).

(2) Notwithstanding subdivisions (b) and (s), a health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including tangible net equity requirements applicable to a licensed health care service plan.

(s) Commencing on the date that the health authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(1) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(2) In addition to the reports required by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Health Care, and the members of the health authority, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(3) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Health Care, and the members of the governing board of the health authority in writing of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(4) The Department of Managed Health Care shall not waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Health Care.

(5) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the authority's Medi-Cal beneficiaries to either of the following:

(A) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the

increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and

administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(9) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the health commissioner of Corporations promulgated thereunder.

(t) In the event a health authority may no longer function for the purposes for which it is established, at the time the health authority's then-existing obligations have been satisfied or the health authority's assets have been exhausted, the board of supervisors may, by ordinance, terminate the health authority.

(u) (1) Prior to the termination of the health authority, the board of supervisors shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of the notification to determine the liabilities and assets of the health authority.

(2) The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department within 30 days upon receipt of these findings.

(v) Any assets of the health authority shall be disposed of pursuant to provisions contained in the contract entered into between the state and the health authority pursuant to this section.

(w) Upon termination of a health authority by the board, the county shall manage any remaining assets of the health authority until superseded by a department-approved plan. Any liabilities of the health authority shall not become obligations of the county upon either the termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

SEC. 85. Section 14087.4 of the Welfare and Institutions Code is amended to read:

14087.4. (a) Any contract made pursuant to this article may be renewed if the provider continues to meet the requirements of this chapter, regulations promulgated pursuant thereto, and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of correction of any deficiencies.

(b) The department may terminate or decline to renew a contract, in whole or in part, when the director determines that such action is necessary to protect the health of the beneficiaries or the funds appropriated to carry out the Medi-Cal program. Nonrenewal or termination under this article shall not qualify the applicant for an administrative hearing including a hearing pursuant to Section 14123.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore contracts under this article shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) For any contract entered into pursuant to this article, the Director of the Department of Managed Health Care shall, at the director's request and with all due haste, grant an exemption from the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out the contract.

SEC. 86. Section 14087.9705 of the Welfare and Institutions Code is amended to read:

14087.9705. (a) The commission shall obtain licensure as a health care service plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code.

(b) Commencing on the date that the commission first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and the commission is in full compliance with all of the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, all of the following provisions shall apply:

(1) The commission is authorized to select and design its automated management information system, subject to the requirement that the department, in cooperation with the commission, prior to making capitated payments, approve the system. The department shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other local initiatives and with health care service plans.

(2) In addition to the reports required by the Department of Managed Health Care under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Director of the Department of Managed Health Care adopted and promulgated thereunder, the commission shall provide, on a monthly basis, to the department, the Department of Managed Health Care, and the members of the commission a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets and liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic that has contracted with the commission to provide health care services.

(3) In addition to the reporting and notification requirements to which the commission is subject under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Managed Health Care, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences.

(4) In no event shall the Department of Managed Health Care waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code after three years after the date of the commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code and the rules of the Director of the Department of Managed Health Care adopted and promulgated thereunder, the commission shall develop a stop-loss program that is appropriate to the risks of the commission. The stop-loss program shall be subject to the approval of the department and the Department of Managed Health Care.

(5) In the event the commission votes to file a petition of bankruptcy, or the board of supervisors notifies the department that it intends to terminate the commission, the department shall immediately transfer the commission's Medi-Cal beneficiaries to other managed care contractors, when the contractors are available, and the contractors are able to

demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees. To the extent that other managed care providers are unavailable or the department determines that the transfer to the other contractors to a fee-for-service reimbursement system is in the best interest of any particular beneficiary, the department shall make that transfer to the fee-for-service system, pending the availability of managed care contractors that can demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or until the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with federal freedom-of-choice requirements.

(6) The commission shall submit to a review of financial records when the department determines, based on data reported by the commission or other data received by the department, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. If the department, pursuant to a review of financial records under this paragraph, determines that the commission will not be able to meet its financial obligation to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the department and shall immediately transfer the commission's Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to beneficiaries and to minimize financial disruption. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be transferred under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize the department to administer the number of covered Medi-Cal enrollments in a manner that ensures that the commission's provider network and administrative

structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purposes for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(9) Nothing in this section shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code, nor shall any thing in this section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care plan under Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code to comply with the requirements of that chapter, and the rules of the Director of the Department of Managed Health Care adopted thereunder.

SEC. 87. Section 14088.19 of the Welfare and Institutions Code is amended to read:

14088.19. (a) The department may enter into primary care case management contracts pursuant to this article with any health care service plan that is licensed by the Director of the Department of Managed Health Care pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

The terms of the contracts entered into pursuant to this section shall be exempt from those provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code that regulate health care service plan contracts. Nothing in this section shall preclude the Director of the Department of Managed Health Care from otherwise regulating a health care service plan subject to the Knox-Keene Health Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(b) When a health care service plan enters into a contract pursuant to this article and also pursuant to Chapter 8 (commencing with Section 14200), there shall be no duplication of service areas between the two contracts without prior written approval by the department.

SEC. 88. Section 14089 of the Welfare and Institutions Code is amended to read:

14089. (a) The purpose of this article is to provide a comprehensive program of managed health care plan services to Medi-Cal recipients residing in clearly defined geographical areas. It is, further, the purpose of this article to create maximum accessibility to health care services by permitting Medi-Cal recipients the option of choosing from among two

or more managed health care plans or fee-for-service managed case arrangements, including, but not limited to, health maintenance organizations, prepaid health plans, primary care case management plans. Independent practice associations, health insurance carriers, private foundations, and university medical centers systems, not-for-profit clinics, and other primary care providers, may be offered as choices to Medi-Cal recipients under this article if they are organized and operated as managed care plans, for the provision of preventive managed health care plan services.

(b) The negotiator may seek proposals and then shall contract based on relative costs, extent of coverage offered, quality of health services to be provided, financial stability of the health care plan or carrier, recipient access to services, cost-containment strategies, peer and community participation in quality control, emphasis on preventive and managed health care services and the ability of the health plan to meet all requirements for both of the following:

(1) Certification, where legally required, by the Director of the Department of Managed Health Care and the Insurance Commissioner.

(2) Compliance with all of the following:

(A) The health plan shall satisfy all applicable state and federal legal requirements for participation as a Medi-Cal managed care contractor.

(B) The health plan shall meet any standards established by the department for the implementation of this article.

(C) The health plan receives the approval of the department to participate in the pilot project under this article.

(c) (1) (A) The proposals shall be for the provision of preventive and managed health care services to specified eligible populations on a capitated, prepaid or postpayment basis.

(B) Enrollment in a Medi-Cal managed health care plan under this article shall be voluntary for beneficiaries eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(2) The cost of each program established under this section shall not exceed the total amount which the department estimates it would pay for all services and requirements within the same geographic area under the fee-for-service Medi-Cal program.

(d) The department shall enter into contracts pursuant to this article, and shall be bound by the rates, terms, and conditions negotiated by the negotiator.

(e) (1) An eligible beneficiary shall be entitled to enroll in any health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides. Enrollment shall be for a minimum of six months. Contracts entered into pursuant to this article

shall be for at least one but no more than three years. The director shall make available to recipients information summarizing the benefits and limitations of each health care plan available pursuant to this section in the geographic area in which the recipient resides.

(2) No later than 30 days following the date a Medi-Cal or AFDC recipient is informed of the health care options described in paragraph (1) of subdivision (e), the recipient shall indicate his or her choice in writing of one of the available health care plans and his or her choice of primary care provider or clinic contracting with the selected health care plan.

(3) The health care options information described in paragraph (1) of subdivision (e) shall include the following elements:

(A) Each beneficiary or eligible applicant shall be provided with the name, address, telephone number, and specialty, if any, of each primary care provider, and each clinic participating in each health care plan. This information shall be presented under geographic area designations in alphabetical order by the name of the primary care provider and clinic. The name, address, and telephone number of each specialist participating in each health care plan shall be made available by contacting the health care options contractor or the health care plan.

(B) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider or clinic contracting with any of the health plans available and has the available capacity and agrees to continue to treat that beneficiary or eligible applicant.

(C) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a health care plan.

(4) At the time the beneficiary or eligible applicant selects a health care plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected health care plan.

(5) Commencing with the implementation of a geographic managed care project in a designated county, a Medi-Cal or AFDC beneficiary who does not make a choice of health care plans in accordance with paragraph (2), shall be assigned to and enrolled in an appropriate health care plan providing service within the area in which the beneficiary resides.

(6) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the health care plan selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care

provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(7) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or health care plan shall be allowed to select or be assigned to another primary care provider within the same health care plan. In addition, the beneficiary shall be allowed to select or be assigned to another health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides in accordance with Section 1903(m)(2)(F)(ii) of the Social Security Act.

(8) The department or its contractor shall notify a health care plan when it has been selected by or assigned to a beneficiary. The health care plan that has been selected or assigned by a beneficiary shall notify the primary care provider that has been selected or assigned. The health care plan shall also notify the beneficiary of the health care plan and primary care provider selected or assigned.

(9) This section shall be implemented in a manner consistent with any federal waiver that is required to be obtained by the department to implement this section.

(f) A participating county may include within the plan or plans providing coverage pursuant to this section, employees of county government, and others who reside in the geographic area and who depend upon county funds for all or part of their health care costs.

(g) The negotiator and the department shall establish pilot projects to test the cost-effectiveness of delivering benefits as defined in subdivisions (a) to (f), inclusive.

(h) The California Medical Assistance Commission shall evaluate the cost-effectiveness of these pilot projects after one year of implementation. Pursuant to this evaluation the commission may either terminate or retain the existing pilot projects.

(i) Funds may be provided to prospective contractors to assist in the design, development, and installation of appropriate programs. The award of these funds shall be based on criteria established by the department.

(j) In implementing this article, the department may enter into contracts for the provision of essential administrative and other services. Contracts entered into under this subdivision may be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 89. Section 14089.4 of the Welfare and Institutions Code is amended to read:

14089.4. The negotiator may consult with the Department of Insurance or the Department of Managed Health Care and shall consult with the Department of Justice Medi-Cal Fraud Unit, the appropriate

licensing boards and the laboratory field services unit of the department for the purposes of determining the qualifications, performance capability, and financial stability of prospective contractors.

SEC. 90. Section 14139.13 of the Welfare and Institutions Code is amended to read:

14139.13. (a) Any contract entered into pursuant to this article may be renewed if the long-term care services agency continues to meet the requirements of this article and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The department may terminate or decline to renew a contract in whole or in part when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to the Medi-Cal program. The administrative hearing requirements of Section 14123 do not apply to the nonrenewal or termination of a contract under this article.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) The Director of the Department of Managed Health Care shall, at the director's request, immediately grant an exemption from Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out any contract entered into pursuant to this article.

SEC. 91. Section 14251 of the Welfare and Institutions Code is amended to read:

14251. ''Prepaid health plan'' means any plan which meets all of the following criteria:

(a) Licensed as a health care service plan by the Director of the Department of Managed Health Care pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340), Division 2, Health and Safety Code), other than a plan organized and operating pursuant to Section 10810 of the Corporations Code which substantially indemnifies subscribers or enrollees for the cost of provided services, or has an application for licensure pending and was registered under the Knox-Mills Health Plan Act prior to its repeal (Chapter 941, Statutes of 1975) or licensed as a nonprofit hospital service plan by the Insurance Commissioner pursuant to Section 11493(e) and Sections 11501 to 11505 of the Insurance Code.

(b) Meets the requirements for participation in the Medicaid Program (Title XIX of the Social Security Act) on an at risk basis.

(c) Agrees with the State Department of Health Services to furnish directly or indirectly health services to Medi-Cal beneficiaries on a predetermined periodic rate basis.

''Prepaid health plan'' includes any organization which is licensed as a plan pursuant to the Knox-Keene Health Care Service Plan Act of 1975 and is subject to regulation by the Department of Managed Health Care pursuant to that act, and which contracts with the State Department of Health Services solely as a fiscal intermediary at risk.

Except for the requirement of licensure pursuant to the Knox-Keene Act, the State Director of Health Services may waive any provision of this chapter which the director determines is inappropriate for a fiscal intermediary at risk. Any such exemption or waiver shall be set forth in the fiscal intermediary at risk contract with the State Department of Health Services.

''Fiscal intermediary at risk'' means any entity which entered into a contract with the State Department of Health Services on a pilot basis pursuant to subdivision (f) of Section 14000, as in effect June 1, 1973, in accordance with which the entity received capitated payments from the state and reimbursed providers of health care services on a fee-for-service or other basis for at least the basic scope of health care services, as defined in Section 14256, provided to all beneficiaries covered by the contract residing within a specified geographic region of the state. The fiscal intermediary at risk shall be at risk for the cost of administration and utilization of services or the cost of services, or both, for at least the basic scope of health care services, as defined in Section 14256, provided to all beneficiaries covered by the contract residing within a specified geographic region of the state. The fiscal intermediary at risk may share the risk with providers or reinsuring agencies or both. Eligibility of beneficiaries shall be determined by the State Department of Health Services and capitation payments shall be based on the number of beneficiaries so determined.

SEC. 92. Section 14308 of the Welfare and Institutions Code is amended to read:

14308. (a) Each prepaid health plan shall furnish to the director such information and reports as required by Title XIX of the federal Social Security Act.

(b) The director may require a prepaid health plan to provide the director with information and reports which are furnished by the prepaid health plan to the Director of the Department of Managed Health Care pursuant to the provisions of Chapter 2.2 (commencing with Section 1340), Division 2, of the Health and Safety Code, the Knox-Keene Health Care Service Plan Act of 1975, or to the Insurance Commissioner pursuant to the provisions of Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate.

(c) The director may, by regulation, require plans to furnish statistical information to the extent such information is necessary for the department to establish rates of payment pursuant to Section 14301 and to provide reports pursuant to Section 14313. The department shall, to the extent feasible, accept this information in a form which is consistent with reports required to be provided pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. In the case of a hospital based plan which is a health maintenance organization qualified pursuant to Title XIII of the federal Public Health Service Act, and which has more than one million enrollees, of whom less than 10 percent are Medi-Cal enrollees, information required pursuant to this subdivision shall consist of reports required to be made to the Department of Health, Education and Welfare pursuant to Title XIII of the federal Public Health Service Act.

SEC. 93. Section 14456 of the Welfare and Institutions Code is amended to read:

14456. The department shall conduct annual medical audits of each prepaid health plan unless the director determines there is good cause for additional reviews.

The reviews shall use the standards and criteria established pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. Except in those instances where major unanticipated administrative obstacles prevent, or after a determination by the director of good cause, the reviews shall be scheduled and carried out jointly with reviews carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if reviews under either act will be carried out within time periods which satisfy the requirements of federal law.

The department shall be authorized to contract with professional organizations or the Department of Managed Health Care or the Department of Insurance, as appropriate, to perform the periodic review required by this section. The department, or its designee, shall make a finding of fact with respect to the ability of the prepaid health plan to provide quality health care services, effectiveness of peer review, and utilization control mechanisms, and the overall performance of the prepaid health plan in providing health care benefits to its enrollees.

SEC. 94. Section 14457 of the Welfare and Institutions Code is amended to read:

14457. In addition to the reviews required or authorized by Section 14456, the department shall conduct periodic onsite visits or additional visits after a determination by the director of good cause by departmental

representatives to include observation of the general operation of the prepaid health plan, the condition of the facilities for delivering health care, the availability of emergency services, the degree of satisfaction of the enrollees, the operation of the plan's grievance system, and the administrative and financial aspects of the operation of the prepaid health plan.

Except when reviewing a plan's grievance system or marketing activities, this evaluation shall use standards and criteria established pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate. Except in those instances where major, unanticipated administrative obstacles prevent, or after a determination by the director of good cause, the visits shall be scheduled and carried out jointly with reviews carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if reviews under either act will be carried out within time periods which satisfy the requirements of federal law.

The State Department of Health Services may contract with the Department of Managed Health Care or the Department of Insurance, as appropriate, to perform the periodic visits required by this section.

SEC. 95. Section 14459 of the Welfare and Institutions Code is amended to read:

14459. (a) The prepaid health plan shall maintain financial records and shall have an annual audit or additional audits after a determination by the director of good cause, performed by an independent certified public accountant. A prepaid health plan operated by a public entity shall have an annual audit performed in a manner approved by the department. All certified financial statements shall be filed with the department as soon as practical after the end of the prepaid health plan's fiscal year and in any event, within a period not to exceed 90 days thereafter. These financial statements shall be filed with the department and shall be public records. The department shall perform routine auditing of prepaid health plan contractors and their affiliated subcontractors. Except in those instances where major unanticipated obstacles prevent, or after a determination by the director of good cause, the audits shall be scheduled and carried out jointly with audits carried out pursuant to the Knox-Keene Health Care Service Plan Act of 1975, or to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, if audits under either act are carried out within time periods which satisfy the requirements of federal law. The department is authorized to contract with the Department of Managed Health Care or the Department of Insurance, as appropriate, to carry out the audits required by this section. The prepaid health plan shall make

all of its books and records available for inspection, examination or copying by the department during normal working hours at the prepaid health plan's principal place of business or at such other place in California as the department shall designate. For good cause, the department may grant an exception to the time when annual financial statements are to be submitted to the department. The annual report required in Section 14313 shall include an itemization of expenditures made by each prepaid health plan for the following categories of expenditures: physician services, inpatient and outpatient hospital services, pharmaceutical services and prescription drugs, dental services, medical transportation services, vision care services, mental health services, laboratory services, X-ray services, enrollee education programs, marketing and enrollment costs, data-processing costs, other administrative costs and health service expenditures and any payments made to subcontractors, and the purposes of the payments, including but not limited to, contributions to election campaigns.

(b) The requirements of a financial and administrative review by the department of any health care service plan licensed by the Director of the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code may be waived upon submission of the financial audit for the same period conducted by the Department of Managed Health Care pursuant to Section 1382 of the Health and Safety Code.

SEC. 96. Section 14460 of the Welfare and Institutions Code is amended to read:

14460. A schedule of reviews, visits, and audits shall be jointly established by the Department of Managed Health Care or the Department of Insurance, as the case may be, and the State Department of Health Services. Nothing in Section 14456, 14457, or 14459 shall be construed to prohibit the State Department of Health Services from conducting reviews, visits, or audits either jointly or individually, for the purpose of following up on findings resulting from reviews, visits, or audits carried out in accordance with this chapter.

SEC. 97. Section 14482 of the Welfare and Institutions Code is amended to read:

14482. No prepaid health plan shall contract with any subcontractor other than the plan's subsidiary corporation, its parent corporation, or another subsidiary of its parent corporation, or an affiliate of the prepaid health plan whose financial statements are consolidated with that of the prepaid health plan at the time of the annual audit by the independent auditors of the plan and when the quarterly and annual financial statements are filed with the Director of the Department of Managed Health Care, if any of the following persons connected with the plan

have a substantial financial interest, as defined by Section 14478, in such subcontractor:

(a) Any person also having a substantial financial interest in the plan.

(b) Any director, officer, partner, trustee, or employee of the plan.

(c) Any member of the immediate family of any person designated in (a) or (b).

SEC. 98. Section 14499.71 of the Welfare and Institutions Code is amended to read:

14499.71. For the purposes of this article, ''fiscal intermediary'' means an entity that agrees to pay for covered services provided to Medi-Cal eligibles in exchange for a premium, subscription charge, or capitation payment; to assume an underwriting risk; and is either licensed by the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or is licensed as a nonprofit hospital service plan by the Insurance Commissioner pursuant to subdivision (e) of Section 11493 of the Insurance Code and Sections 11501 to 11505, inclusive, of the Insurance Code.

SEC. 99. (a) Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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

(1) Health and Safety Code Sections 1341.7, 1343, 1363, 1367.25, 1368.2, 1374.30, 1374.32, 1383.15, 1391.5, and 1398.

(2) Insurance Code Sections 742.435, 10169, 10169.2, 10169.3, 10169.5 and 10279.

SEC. 100. (a) The Department of Managed Care shall hereafter be known as the Department of Managed Health Care in all statutes that reference the Department of Managed Care.

(b) The Advisory Committee on Managed Care shall hereafter be known as the Advisory Committee on Managed Health Care in all statutes that reference the Advisory Committee on Managed Care.

(c) The Managed Care Fund shall hereafter be known as the Managed Health Care Fund in all statutes that reference the Managed Care Fund.

CHAPTER 858

An act to amend Section 4019 of the Business and Professions Code and to amend Sections 14087.32, 14087.36, and 14139.53 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 4019 of the Business and Professions Code is amended to read:

4019. An "order,'' entered on the chart or medical record of a patient registered in a hospital or a patient under emergency treatment in the hospital, by or on the order of a practitioner authorized by law to prescribe drugs, shall be authorization for the administration of the drug from hospital floor or ward stocks furnished by the hospital pharmacy or under licensure granted under Section 4056, and shall be considered to be a prescription if the medication is to be furnished directly to the patient by the hospital pharmacy or another pharmacy furnishing prescribed drugs for hospital patients; provided that the chart or medical record of the patient contains all of the information required by Sections 4040 and 4070 and the order is signed by the practitioner authorized by law to prescribe drugs, if he or she is present when the drugs are given. If he or she is not present when the drugs are given, the order shall be signed either by the attending physician responsible for the patient's care at the time the drugs are given to the patient or by the practitioner who ordered the drugs for the patient on the practitioner's next visit to the hospital.

SEC. 2. Section 14087.32 of the Welfare and Institutions Code, as amended by Chapter 525 of the Statutes of 1999, is amended to read:

14087.32. Commencing on the date the authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until a commission established pursuant to Section 14087.31 is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, all of the following shall apply:

(a) The commission may select and design its automated management information system. The department, in cooperation with the commission, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the commission, and any other information that is generally required by the department in its contracts with other health care service plans.

(b) In addition to the reports required by the Department of Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Care promulgated thereunder, a commission established pursuant to Section 14087.31 shall provide, on a monthly basis, to the department, the Department of Managed Care, and the members of the commission, a copy of the automated report described in subdivision (a) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association or community clinic, which has contracted with the authority to provide health care services.

(c) In addition to the reporting and notification obligations the commission has under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the chief executive officer or director of the commission shall immediately notify the department, the Department of Managed Care, and the members of the commission, in writing, of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the commission being unable to meet its financial obligations to health care providers or to other parties. The written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions which will be taken to address the anticipated consequences.

(d) The Department of Managed Care shall not, in any way, waive or vary, nor shall the department request the Department of Managed Care to waive or vary, the tangible net equity requirements for a commission under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, after three years from the date of commencement of capitated payments to the commission. Until the commission is in compliance with all of the tangible net equity requirements under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the rules of the Director of the Department of Managed Care adopted thereunder, the commission shall develop a stop-loss program appropriate to the risks of the

commission, which program shall be satisfactory to both department and the Department of Managed Care.

(e) (1) If the commission votes to file a petition of bankruptcy, or the county board of supervisors notifies the department of its intent to terminate the commission, the department shall immediately transfer the authority's Medi-Cal beneficiaries as follows:

(A) To other managed care contractors, when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that it is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or the department determines that providing care to any particular beneficiary pursuant to a fee-for-service reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary.

(2) Beneficiary eligibility for Medi-Cal shall not be affected by actions taken pursuant to paragraph (1).

(3) Beneficiaries who have been or who are scheduled to be transferred to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(f) (1) A commission established pursuant to Section 14087.31 shall submit to a review of financial records when the department determines, based on data reported by the commission or otherwise, that the commission will not be able to meet its financial obligations to health care providers contracting with the commission. Where the review of financial records determines that the commission will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the Director of Health Services shall immediately terminate the contract between the commission and the state, and immediately transfer the commission's Medi-Cal beneficiaries in accordance with subdivision (e) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers.

(2) The action of the Director of Health Services pursuant to paragraph (1) shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action.

(3) Beneficiaries who have been or who are scheduled to be transferred under subdivision (e) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(g) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the commission shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the commission's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(h) In the event a commission is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the commission.

(i) Nothing in this section shall be construed to impair or diminish the authority of the Director of the Department Managed Care under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, nor shall anything in the section be construed to reduce or otherwise limit the obligation of a commission licensed as a health care service plan to comply with the requirements of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and the rules of the Director of the Department of Managed Care adopted thereunder.

(j) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), including but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce or submit pursuant to this section.

SEC. 3. Section 14087.36 of the Welfare and Institutions Code, as amended by Chapter 525 of the Statutes of 1999, is amended to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) ''County'' means the City and County of San Francisco.

(2) ''Board'' means the Board of Supervisors of the City and County of San Francisco.

(3) ''Department'' means the State Department of Health Services.

(4) ''Governing body'' means the governing body of the health authority.

(5) ''Health authority'' means the separate public agency established by the board of supervisors to operate a health care system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties, privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(d) (1) (A) The health authority shall be considered a public entity separate and distinct from the county and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, ''employee'' shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to

Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall report its findings to the county and to the Department of Managed Care within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Managed Care within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if no such successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St.

Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years.

Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body. This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs

(F) and (G) of paragraph (1) of subdivision (k) represent and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, or within the meaning of conflict-of-interest restrictions in the county charter, if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act, Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and to contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(z) Contracts under this article between the State Department of Health Services and the health authority shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(aa) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county controller or designee to perform the activities authorized by this subdivision.

(bb) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 4. Section 14139.53 of the Welfare and Institutions Code is amended to read:

14139.53. (a) The department shall develop criteria to ensure that pilot project sites maintain fiscal solvency, including, but not limited to, the following:

(1) The capability to achieve and maintain sufficient fiscal tangible net equity within a timeframe to be specified by the department for each pilot project site.

(2) The capability to maintain prompt and timely provider payments.

(3) A management information system that is approved by the department and is capable of meeting the requirements of the pilot program.

(b) Any pilot project established under this article shall immediately notify the department in writing of any fact or facts that are likely to result in the pilot project or the long-term care services agency being unable to meet its financial obligations. The written notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences, and shall be made available upon request unless otherwise prohibited by law.

CHAPTER 859

An act to amend Sections 4852, 5101, and 5103 of, and to add Section 5061 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 2000. Filed with
Secretary of State September 29, 2000.]

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

SECTION 1. Section 4852 of the Vehicle Code is amended to read:

4852. (a) License plates issued for motor vehicles, other than motorcycles, shall be rectangular in shape, 12 inches in length and six inches in width. The number and letter characters on the plates shall have a minimum height of two and three-quarter inches, a minimum width of one and one-quarter inches, and a minimum spacing between characters of five-sixteenths of an inch.

(b) Motorcycle license plates shall measure seven inches in length and four inches in width, and the characters on the plates shall have a minimum height of one and one-half inches and a minimum width of nine-sixteenths inches, and shall have a minimum spacing between characters of three-sixteenths of an inch.

SEC. 2. Section 5061 is added to the Vehicle Code, to read:

5061. (a) Notwithstanding any other provision of law, if the department permits the issuance of a special interest license plate for display on a motorcycle, the department shall not approve any design for that plate that incorporates either or both of the following:

(1) Full or partial graphic designs appearing behind the license plate number configuration.

(2) Symbols within the license plate number configuration.

(b) Any special interest license plate issued for display on a motorcycle is subject to the same fees that are collected for the issuance and retention of special interest license plates on other vehicles.

SEC. 3.5. Section 5101 of the Vehicle Code is amended to read:

5101. Any person who is the registered owner or lessee of a passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer registered or certificated with the department, or who makes application for an original registration or renewal registration of that vehicle, may, upon payment of the fee prescribed in Section 5106, apply to the department for environmental license plates, in the manner prescribed in Section 5105, which plates shall be affixed to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which registration is sought in lieu of the regular license plates.

SEC. 3. Section 5101 of the Vehicle Code is amended to read:

5101. Any person who is the registered owner or lessee of a passenger vehicle, commercial vehicle, motorcycle, or trailer registered with the department, or who makes application for an original registration or renewal registration of any vehicle, may, upon payment of the fee prescribed in Section 5106, apply to the department for

environmental license plates, in the manner prescribed in Section 5105, which plates shall be affixed to the passenger vehicle, commercial vehicle, motorcycle, or trailer for which registration is sought in lieu of the regular license plates.

SEC. 4. Section 5103 of the Vehicle Code is amended to read:

5103. ''Environmental license plates,'' as used in this article, means license plates that have displayed upon them the registration number assigned to the passenger vehicle, commercial vehicle, motorcycle, or trailer for which a registration number was issued in a combination of letters or numbers, or both, requested by the owner or lessee of the vehicle.

SEC. 4.5. Section 5103 of the Vehicle Code is amended to read:

5103. ''Environmental license plates,'' as used in this article, means license plates or permanent trailer identification plates that have displayed upon them the registration number assigned to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which a registration number was issued in a combination of letters or numbers, or both, requested by the owner or lessee of the vehicle.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 5101 of the Vehicle Code proposed by both this bill and SB 2084. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 5101 of the Vehicle Code, and (3) this bill is enacted after SB 2084, in which case Section 5101 of the Vehicle Code, as amended by SB 2084, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 5103 of the Vehicle Code proposed by both this bill and SB 2084. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 5103 of the Vehicle Code, and (3) this bill is enacted after SB 2084, in which case Section 5103 of the Vehicle Code, as amended by SB 2084, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

CHAPTER 860

An act to amend Section 640 of the Penal Code, to amend Section 21623 of, to add Section 99315.8 to, and to repeal Sections 21503 and 21606 of, the Public Utilities Code, to amend Section 104.12 of the

Streets and Highways Code, and to amend Sections 5002.7, 21455.6, 34505.6, 35400, 35401.3, 35401.5, 35402, and 40303 of the Vehicle Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 640 of the Penal Code is amended to read:

640. (a) Any of the acts described in subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment, when committed on or in any of the following:

(1) Any facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.

(2) Any facility of, or vehicle operated by any entity subsidized by, the Department of Transportation.

(3) Any leased or rented facility or vehicle for which any of the entities described in paragraph (1) or (2) incur costs of cleanup, repair, or replacement as a result of any of those acts.

(b) (1) Evasion of the payment of any fare of the system.

(2) Misuse of any transfer, pass, ticket, or token with the intent to evade the payment of any fare.

(3) Playing sound equipment on or in any system facility or vehicle.

(4) Smoking, eating, or drinking in or on any system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon any system facility or vehicle.

(6) Willfully disturbing others on or in any system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying any explosive or acid, flammable liquid, or toxic or hazardous material in any public transit facility or vehicle.

(8) Urinating or defecating in any system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to any person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in any system facility or vehicle.

(B) This paragraph (9) shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in any system facility, vehicle, or parking structure. This paragraph does not apply to any activity that is necessary for utilization of the transit facility by a bicyclist, including, but not limited to, any activity that is necessary for parking a bicycle or transporting a bicycle aboard a transit vehicle, if that activity is conducted with the permission of the transit agency in a manner that does not interfere with the safety of the bicyclist or other patrons of the transit facility.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

SEC. 2. Section 21503 of the Public Utilities Code is repealed.

SEC. 3. Section 21606 of the Public Utilities Code is repealed.

SEC. 4. Section 21632 of the Public Utilities Code is amended to read:

21632. (a) The department may also acquire existing airports and air navigation facilities, but it shall not acquire any airport or air navigation facility owned or controlled by a political subdivision of this or any other state without the consent of the political subdivision.

(b) Whenever an airport owned or operated by the United States in this state ceases to be so owned or operated, the department, in consultation with local and regional transportation planning agencies, may evaluate the present and future need for the airport in the state's public-use airport system, including the need for both the transportation of people and goods. The purpose of the evaluation is to determine aviation needs and does not eliminate any requirement of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) Prior to finalizing the evaluation, the department shall submit a copy of its report to the commission for review and comment. The commission shall complete its review and forward any comments to the department not later than 45 days after receiving the evaluation.

(d) Upon completion of its evaluation, the department may make a recommendation to the Legislature, the commission, the affected local agencies, and the appropriate federal agency for the airport's ownership

and type of operation as a public-use airport, if the department determines that the airport would be of significant benefit to the state's airport system. It is the intent of the Legislature that the department, in making its recommendation, give priority for ownership and operation of these public-use airports to a local political subdivision or subdivisions acting jointly.

(e) Notwithstanding Section 21606, if a political subdivision or subdivisions acting jointly notify the department of their intentions to prepare a reuse plan for the airport, and simultaneously apply to the Federal Aviation Administration for a federal grant to develop an airport master plan for the airport, the department shall not make its recommendation pursuant to subdivision (d). If the department's evaluation determines that the airport would be of significant benefit to the state's airport system, and the political subdivision or subdivisions acting jointly fail to convert the federal airport to a civil public-use airport in accordance with the department's evaluation within five years of notification to the department, or fail to evidence substantial progress toward that purpose as determined by the department, then the department may take action in accordance with subdivision (f).

(f) If the department determines the airport is of present or future benefit to the state's public-use airport system, and no political subdivision applies to the appropriate federal agency to acquire or operate the airport, or has notified the department of its intention to prepare a reuse plan for the airport and thereafter fails to act upon its application pursuant to subdivision (e), the department may, subject to subdivision (g), assist in the formation of a public entity to own and operate the airport which shall be representative of political subdivisions in the area which surrounds and is served by the airport, as determined by the department. If established, the owning and operating entity may, subject to subdivision (g), prepare and submit an application to the appropriate federal agency to acquire or operate, or acquire and operate, the airport as a public airport.

(g) Notwithstanding subdivision (f), if any political subdivision has previously applied to the appropriate federal agency to acquire and operate the airport as a public airport, has completed all required environmental and fiscal evaluations, and subsequently withdrew its application prior to December 31, 1988, the department shall not file any application to acquire or operate the airport or assist in the formation of a public entity to own and operate the airport.

SEC. 5. Section 99315.8 is added to the Public Utilities Code, to read:

99315.8. All funds from the Public Transportation Account and the State Highway Account, in the State Transportation Fund, previously allocated by the commission for specific track repair and rolling stock

acquisitions through resolutions number MFP-95-05, MFP-95-10, MPFP-95-01, MFA-96-01, and MBFA-98-01 shall also be available for expenditure on any form of track improvement project, track rehabilitation project, or rolling stock acquisition project nominated by the North Coast Railroad Authority, as approved by the commission. Projects nominated by the North Coast Railroad Authority, for which funds in the State Highway Account in the State Transportation Fund are to be used, are also required to be eligible under Article XIX of the California Constitution. The encumbering and expending of funds for this project is not subject to an additional allocation action or approval action, or both actions, by the commission.

SEC. 6. Section 104.12 of the Streets and Highways Code is amended to read:

104.12. (a) The department may lease to public agencies or private entities for any term not to exceed 99 years the use of areas above or below state highways, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection to the safety and the adequacy of highway facilities and to abutting or adjacent land uses. Authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, which are on active duty and are not merely being stored, shall be given preference in the use of these areas, and no payment of consideration shall be required for this use of the areas by these vehicles. Prior to entering into any lease, the department shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the commission, except that, in the case of leases with private entities, the leases shall only be made after competitive bidding unless the commission finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the state. The possibilities of entering into the leases, and the consequent benefits to be derived therefrom, may be considered by the department in designing and constructing the highways.

Revenues from the leases shall be deposited in the State Highway Account. If leased property was provided to the department for state highway purposes through donation or at less than fair market value, the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired. If the donor or seller was a local agency which no longer exists at the time the department enters into the lease, the local agency's share of lease revenues shall be paid to the county or counties within which the local agency was situated.

(b) Notwithstanding subdivision (a), in any case where sufficient land or airspace exists within the right-of-way of any highway, constructed in whole or in part with federal-aid highway funds, to accommodate needed passenger, commuter, or high-speed rail,

magnetic levitation systems, and highway and nonhighway public mass transit facilities, the department may make the land or airspace available, with or without charge, to a public entity for those purposes, subject to any reservations, restrictions, or conditions that it determines necessary to ensure adequate protection to the safety and adequacy of highway facilities and to abutting or adjacent land uses.

(c) The department shall consider future lease potential of areas above or below state highway projects when planning new state highway projects. This consideration shall be accomplished by intradepartment consultation between offices concerned with project development and airspace lease development.

SEC. 7. Section 5002.7 of the Vehicle Code is amended to read:

5002.7. (a) For any county of over 20,000 square miles in area, any member of the county board of supervisors, or any county auditor, controller, treasurer, or tax collector, who is regularly issued a county-owned vehicle may apply to the department for regular series license plates for that vehicle, if a request for that issuance is also made by the county board of supervisors. The application and the request shall be in the manner specified by the department.

(b) Regular series license plates issued pursuant to subdivision (a) shall be surrendered to the department by the board member or administrative officer, as applicable, upon the reassignment of a vehicle, for which those plates have been issued, to a person other than the person who requested those plates.

SEC. 8. Section 21455.6 of the Vehicle Code is amended to read:

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

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

SEC. 9. Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) Upon determining that a motor carrier of property who is operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500, or any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, on a public highway, has done any of the following, the department shall recommend that the Department of Motor Vehicles suspend or revoke the carrier's motor carrier permit, or for interstate operators, the department shall recommend to the Federal Motor Carrier Safety Administration that appropriate administrative action be taken against the carrier:

(1) Failed to maintain any vehicle of a type described above in a safe operating condition or to comply with the Vehicle Code or with

applicable regulations contained in Title 13 of the California Code of Regulations, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension or revocation of the motor carrier's motor carrier permit.

(2) Failed to enroll all drivers in the pull-notice system as required by Section 1808.1.

(3) Failed to submit any application or pay any fee required by subdivision (e) or (h) of Section 34501.12 within the timeframes set forth in that section.

(b) Upon determining that a household goods carrier, or a household goods carrier transporting used office, store, or institution furniture and fixtures under its household goods carrier permit issued under Section 5137 of the Public Utilities Code, operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500 on a public highway has done any of the following, the department shall recommend that the Public Utilities Commission deny, suspend, or revoke the carrier's operating authority, or for interstate operators, the department shall recommend to the Federal Motor Carrier Safety Administration that appropriate administrative action be taken against the carrier:

(1) Failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with applicable regulations contained in Title 13 of the California Code of Regulations, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension, revocation, or denial of the motor carrier's operating authority.

(2) Failed to enroll all drivers in the pull-notice system as required by Section 1808.1.

(3) Failed to submit any application or pay any fee required by subdivision (e) or (h) of Section 34501.12 within the timeframes set forth in that section.

(c) For purposes of this section, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the motor carrier failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the carrier's enrollment by the Department of Motor Vehicles for the nonpayment of required fees is a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(d) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record or compliance with Section 1808.1 or subdivision (e) or (h) of Section

34501.12 is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's motor carrier permit by the Department of Motor Vehicles, suspension, revocation, of the motor carrier's operating authority by the California Public Utilities Commission, or administrative action by the Federal Motor Carrier Safety Administration.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a) or (b).

(e) Upon receipt of a written recommendation from the department that a motor carrier permit or operating authority be suspended, revoked, or denied, the Department of Motor Vehicles or Public Utilities Commission, as appropriate, shall, pending a hearing in the matter pursuant to Section 34623 or appropriate Public Utilities Commission authority, suspend the motor carrier permit or operating authority. The written recommendation shall specifically indicate compliance with subdivision (d).

SEC. 10. Section 35400 of the Vehicle Code is amended to read:

35400. (a) No vehicle shall exceed a length of 40 feet.

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

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer

does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, ''safety bumper'' means any device which is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A bus when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(7) A bus when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(8) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front of the bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on any bus which, exclusive of the device, exceeds 40 feet in length or on any bus having a device attached to the rear of the bus pursuant to paragraph (7).

(9) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, shall not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

As used in this paragraph, ''reasonable access'' means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5 and access authorized through a process substantially similar to that authorized for combinations of vehicles pursuant to subdivision (d) of Section 35401.5.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph (3) of subdivision (b) or under paragraph (8) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) No person shall improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (8) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

SEC. 10.5. Section 35400 of the Vehicle Code is amended to read:

35400. (a) No vehicle shall exceed a length of 40 feet.

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

(1) A vehicle used in a combination of vehicles when the excess length is caused by auxiliary parts, equipment, or machinery not used as space to carry any part of the load, except that the combination of vehicles shall not exceed the length provided for combination vehicles.

(2) A vehicle when the excess length is caused by any parts necessary to comply with the fender and mudguard regulations of this code.

(3) (A) An articulated bus or articulated trolley coach that does not exceed a length of 60 feet.

(B) An articulated bus or articulated trolley coach described in subparagraph (A) may be equipped with a folding device attached to the front of the bus or trolley if the device is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect

efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front body of the bus or trolley coach when fully deployed. The handlebars of a bicycle that is transported on a device described in this subparagraph shall not extend more than 42 inches from the front of the bus.

(4) A semitrailer while being towed by a motortruck or truck tractor, if the distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet for semitrailers having two or more axles, or 38 feet for semitrailers having one axle if the semitrailer does not, exclusive of attachments, extend forward of the rear of the cab of the motortruck or truck tractor.

(5) A bus or house car when the excess length is caused by the projection of a front safety bumper or a rear safety bumper, or both. The safety bumper shall not cause the length of the vehicle to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. For the purposes of this chapter, ''safety bumper'' means any device that is fitted on an existing bumper or which replaces the bumper and is constructed, treated, or manufactured to absorb energy upon impact.

(6) A bus when the excess length is caused by a device, located in front of the front axle, for lifting wheelchairs into the bus. That device shall not cause the length of the bus to be extended by more than 18 inches, inclusive of any front safety bumper.

(7) A bus when the excess length is caused by a device attached to the rear of the bus designed and used exclusively for the transporting of bicycles. This device may be up to 10 feet in length, if the device, along with any other device permitted pursuant to this section, does not cause the total length of the bus, including any device or load, to exceed 50 feet.

(8) A bus operated by a public agency or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, used in transit system service, other than a schoolbus, when the excess length is caused by a folding device attached to the front body of the bus which is designed and used exclusively for transporting bicycles. The device, including any bicycles transported thereon, shall be mounted in a manner that does not materially affect efficiency or visibility of vehicle safety equipment, and shall not extend more than 36 inches from the front of the bus when fully deployed. The handlebars of a bicycle that is transported on a device described in this paragraph shall not extend more than 42 inches from the front of the bus. A device described in this paragraph may not be used on any bus which, exclusive of the device, exceeds 40 feet in length or on any bus having a device attached to the rear of the bus pursuant to paragraph (7).

(9) A bus of a length of up to 45 feet when operating on those highways specified in subdivision (a) of Section 35401.5. The

Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, shall not deny reasonable access to a bus of a length of up to 45 feet between the highways specified in subdivision (a) of Section 35401.5 and points of loading and unloading for motor carriers of passengers as required by the federal Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240).

(10) (A) A house car of a length of up to 45 feet when operating on the National System of Interstate and Defense Highways or when using those portions of federal aid primary system highways that have been qualified by the United States Secretary of Transportation for that use, or when using routes appropriately identified by the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions.

(B) A house car described in subparagraph (A) may also use highways not specified in subparagraph (A) that provide reasonable access to facilities for purposes limited to fuel, food, and lodging when that access is consistent with the safe operation of the vehicle and when the facility is within one road mile of identified points of ingress and egress to or from highways specified in subparagraph (A) for use by that vehicle.

(C) As used in this paragraph and paragraph (9), ''reasonable access'' means access substantially similar to that authorized for combinations of vehicles pursuant to subdivision (c) of Section 35401.5.

(D) Any access route established by a local authority pursuant to subdivision (d) of Section 35401.5 is open for access by a house car of a length of up to 45 feet. In addition, local authorities may establish a process whereby access to services by house cars of a length of up to 45 feet may be applied for upon a route not previously established as an access route. The denial of a request for access to services shall be only on the basis of safety and an engineering analysis of the proposed access route. In lieu of processing an access application, local authorities, with respect to highways under their jurisdiction, may provide signing, mapping, or a listing of highways, as necessary, to indicate the use of these specific routes by a house car of a length of up to 45 feet.

(c) The Legislature, by increasing the maximum permissible kingpin to rearmost axle distance to 40 feet effective January 1, 1987, as provided in paragraph (4) of subdivision (b), does not intend this action to be considered a precedent for any future increases in truck size and length limitations.

(d) Any transit bus equipped with a folding device installed on or after January 1, 1999, that is permitted under subparagraph (B) of paragraph (3) of subdivision (b) or under paragraph (8) of subdivision (b) shall be additionally equipped with any of the following:

(1) An indicator light that is visible to the driver and is activated whenever the folding device is in an extended position.

(2) Any other device or mechanism that provides notice to the driver that the folding device is in an extended position.

(3) A mechanism that causes the folding device to retract automatically from an extended position.

(e) (1) No person shall improperly or unsafely mount a bicycle on a device described in subparagraph (B) of paragraph (3) of subdivision (b), or in paragraph (8) of subdivision (b).

(2) Notwithstanding subdivision (a) of Section 23114 or subdivision (a) of Section 24002 or any other provision of law, when a bicycle is improperly or unsafely loaded by a passenger onto a transit bus, the passenger, and not the driver, is liable for any violation of this code that is attributable to the improper or unlawful loading of the bicycle.

SEC. 11. Section 35401.3 of the Vehicle Code is amended to read:

35401.3. (a) Notwithstanding subdivisions (a) and (b) of Section 35401, a combination of vehicles designed and used to transport motor vehicles, camper units, or boats, which consists of a motortruck and stinger-steered semitrailer, shall be allowed a length of up to 70 feet if the kingpin is at least 3 feet behind the rear drive axle of the motortruck. This combination shall not be subject to subdivision (a) of Section 35411, but the load upon the rear vehicle of the combination shall not extend more than 6 feet 6 inches beyond the allowable length of the vehicle.

(b) A combination of vehicles designed and used to transport motor vehicles, camper units, or boats, which consists of a motortruck and stinger-steered semitrailer, shall be allowed a length of up to 75 feet if all of the following conditions are maintained:

(1) The distance from the steering axle to the rear drive axle of the motortruck does not exceed 24 feet.

(2) The kingpin is at least 5 feet behind the rear drive axle of the motortruck.

(3) The distance from the kingpin to the rear axle of the semitrailer does not exceed 34 feet except that the distance from the kingpin to the rear axle of a triple axle semitrailer does not exceed 36 feet.

This combination shall not be subject to subdivision (a) of Section 35411, but the load upon the rear vehicle of the combination shall not extend more than 6 feet 6 inches beyond the allowable length of the vehicle.

SEC. 12. Section 35401.5 of the Vehicle Code is amended to read:

35401.5. (a) A combination of vehicles consisting of a truck tractor and semitrailer, or of a truck tractor, semitrailer, and trailer, is not subject to the limitations of Sections 35400 and 35401, when operating on the National System of Interstate and Defense Highways or when using

those portions of federal-aid primary system highways that have been qualified by the United States Secretary of Transportation for that use, or when using routes appropriately identified by the Department of Transportation or local authorities as provided in subdivision (c) or (d), if all of the following conditions are met:

(1) The length of the semitrailer in exclusive combination with a truck tractor does not exceed 48 feet. A semitrailer not more than 53 feet in length shall satisfy this requirement when configured with two or more rear axles, the rearmost of which is located 40 feet or less from the kingpin or when configured with a single axle which is located 38 feet or less from the kingpin. For purposes of this paragraph, a motortruck used in combination with a semitrailer, when that combination of vehicles is engaged solely in the transportation of motor vehicles, camper units, or boats, is considered to be a truck tractor.

(2) Neither the length of the semitrailer nor the length of the trailer when simultaneously in combination with a truck tractor exceeds 28 feet 6 inches.

(b) Subdivisions (b), (d), and (e) of Section 35402 do not apply to combinations of vehicles operated subject to the exemptions provided by this section.

(c) Combinations of vehicles operated pursuant to subdivision (a) may also use highways not specified in subdivision (a) which provide reasonable access to terminals and facilities for purposes limited to fuel, food, lodging, and repair when that access is consistent with the safe operation of the combinations of vehicles and when the facility is within one road mile of identified points of ingress and egress to or from highways specified in subdivision (a) for use by those combinations of vehicles.

(d) The Department of Transportation or local authorities may establish a process whereby access to terminals or services may be applied for upon a route not previously established as an access route. The denial of a request for access to terminals and services shall be only on the basis of safety and an engineering analysis of the proposed access route. If a written request for access has been properly submitted and has not been acted upon within 90 days of receipt by the department or the appropriate local agency, the access shall be deemed automatically approved. Thereafter, the route shall be deemed open for access by all other vehicles of the same type regardless of ownership. In lieu of processing an access application, the Department of Transportation or local authorities with respect to highways under their respective jurisdictions may provide signing, mapping, or a listing of highways as necessary to indicate the use of specific routes as terminal access routes. For purposes of this subdivision, ''terminal'' means either of the following:

(1) A facility where freight originates, terminates, or is handled in the transportation process.

(2) A facility where a motor carrier maintains operating facilities.

(e) Nothing in subdivision (c) or (d) authorizes state or local agencies to require permits of terminal operators or to charge terminal operators fees for the purpose of attaining access for vehicles described in this section.

(f) Notwithstanding subdivision (d), the limitations of access specified in that subdivision do not apply to licensed carriers of household goods when directly enroute to or from a point of loading or unloading of household goods, if travel on highways other than those specified in subdivision (a) is necessary and incidental to the shipment of the household goods.

(g) (1) Notwithstanding Sections 35400 and 35401, the Department of Transportation or local authorities, with regard to highways under their respective jurisdictions, may, upon application, issue a special permit authorizing the applicant to operate a combination of vehicles consisting of a truck tractor semitrailer combination operated pursuant to subdivision (a) with a kingpin to rearmost axle measurement limit of not more than 46 feet on trailers used exclusively or primarily in connection with motorsports. As used in this paragraph, ''motorsports'' means any event, and all activities leading up to that event, including, but not limited to, administration, testing, practice, promotion, and merchandising, that is sanctioned under the auspices of the member organizations of the Automobile Competition Committee for the United States.

(2) A local authority, as a condition of issuing a special permit under this subdivision, may establish reasonable controls on the allowable hours of operation of those semitrailers that are authorized to operate under this subdivision.

(h) The Legislature finds and declares both of the following:

(1) In authorizing the use of 53-foot semitrailers, it is the intent of the Legislature to conform with Section 2311(b) of Title 49 of the United States Code by permitting the continued use of semitrailers of the dimensions as those that were in actual and legal use on December 1, 1982, and does not intend this action to be a precedent for future increases in the parameters of any of those vehicles that would adversely affect the turning maneuverability of vehicle combinations.

(2) In authorizing the department to issue special transportation permits for motorsports, it is the intent of the Legislature to conform with Section 31111(b)(1)(E) of Title 49 of the United States Code. It is also the intent of the Legislature that this action not be a precedent for future increases in the distance from the kingpin to the rearmost axle of

semitrailers that would adversely affect the turning maneuverability of vehicle combinations.

SEC. 13. Section 35402 of the Vehicle Code is amended to read:

35402. (a) Any extension or device, including any adjustable axle added to the front or rear of a vehicle, used to increase the carrying capacity of a vehicle shall be included in measuring the length of a vehicle, except that a drawbar shall not be included in measuring the length of a vehicle but shall be included in measuring the overall length of a combination of vehicles.

(b) Notwithstanding subdivision (a), extensions of not more than 18 inches in length on each end of a vehicle or combination of vehicles used exclusively to transport vehicles shall not be included in measuring the length of a vehicle or combination of vehicles when the vehicles are loaded.

(c) Notwithstanding subdivision (a), an extension of not more than 18 inches in length on the last trailer in a combination of vehicles transporting loads shall not be included in measuring the length of a vehicle or combination of vehicles when the vehicles are loaded. Additionally, an extension of not more than 18 inches in length on the front of the first trailer in a combination of vehicles transporting loads shall not be included in measuring the length of a vehicle or combination of vehicles when the vehicles are loaded and on highways, other than those highways designated by the United States Department of Transportation as national network routes.

(d) Notwithstanding subdivision (a), any extension or device which is not used to carry any load and which does not exceed three feet in length, added to the rear of a vehicle, and is used exclusively for pushing the vehicle or a combination of vehicles, which vehicle or combination of vehicles is designed and used exclusively to transport earth, sand, gravel, and similar materials, shall be included in measuring the length of the vehicle but shall not be included in measuring the overall length of the combination of vehicles.

(e) Notwithstanding subdivision (a), a truck semitrailer combination, but not a truck tractor and semitrailer combination, may use a sliding fifth wheel, or a truck tractor, semitrailer, trailer, and a truck-trailer combination may use a sliding drawbar, to extend the length of the combination by not more than 2 feet 6 inches while traveling 35 miles per hour or less on any highway, except a freeway. These provisions shall apply, however, to freeway onramps and offramps and freeway connectors. The sliding fifth wheel or drawbar when extended shall not be included in measuring the overall length of the combination of vehicles if the pivot point of the semitrailer connection is more than two feet to the rear of the center of the rearmost axle of the motortruck or if

the distance from the pivot point to the center of the rearmost axle of the semitrailer does not exceed 34 feet.

Combinations of vehicles permitted by this subdivision shall be in compliance with the weight limits provided in Article 1 (commencing with Section 35550) of Chapter 5 whenever any drawbar or sliding fifth wheel is extended, contracted, or in any intermediate position as provided for by this subdivision.

SEC. 14. Section 40303 of the Vehicle Code is amended to read:

40303. Whenever any person is arrested for any of the following offenses and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear as provided in this section or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made:

(a) Section 10852 or 10853, relating to injuring or tampering with a vehicle.

(b) Section 23103 or 23104, relating to reckless driving.

(c) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to an inspection or test of the lights upon the vehicle under Section 2804 hereof, which is punishable as a misdemeanor.

(d) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to a brake test which is punishable as a misdemeanor.

(e) Subdivision (a) of Section 2800, relating to the refusal to submit vehicle and load to an inspection, measurement, or weighing as prescribed in Section 2802 or a refusal to adjust the load or obtain a permit as prescribed in Section 2803.

(f) Subdivision (a) of Section 2800, insofar as it relates to any driver who continues to drive after being lawfully ordered not to drive by a member of the California Highway Patrol for violating the driver's hours of service or driver's log regulations adopted pursuant to subdivision (a) of Section 34501.

(g) Subdivision (b) of Section 2800, relating to a failure or refusal to comply with any lawful out-of-service order.

(h) Section 20002 or 20003, relating to duties in the event of an accident.

(i) Section 23109, relating to participating in speed contests or exhibition of speed.

(j) Section 14601, 14601.1, 14601.2, or 14601.5, relating to driving while license is suspended or revoked.

(k) When the person arrested has attempted to evade arrest.

(*l*) Section 23332, relating to persons upon vehicular crossings.

(m) Section 2813, relating to the refusal to stop and submit a vehicle to an inspection of its size, weight, and equipment.

(n) Section 21461.5, insofar as it relates to a pedestrian who, after being cited for a violation of Section 21461.5, is, within 24 hours, again found upon the freeway in violation of Section 21461.5 and thereafter refuses to leave the freeway after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(o) Subdivision (a) of Section 2800, insofar as it relates to a pedestrian who, after having been cited for a violation of subdivision (a) of Section 2800 for failure to obey a lawful order of a peace officer issued pursuant to Section 21962, is within 24 hours again found upon the bridge or overpass and thereafter refuses to leave after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(p) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(q) Section 21221.5, relating to operating a motorized scooter while under the influence of a alcoholic beverage or any drug.

SEC. 15. Section 10.5 of this bill incorporates amendments to Section 35400 of the Vehicle Code proposed by this bill and AB 2175. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 35400 of the Vehicle Code, and (3) this bill is enacted after AB 2175, in which case Section 35400 of the Vehicle Code, as amended by AB 2175, shall remain operative only until the operative date of this bill, at which time Section 10.5 of this bill shall become operative, and Section 10 of this bill shall not become operative.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 861

An act to amend Section 13340 of, and to add Sections 29145 and 43402 to, the Government Code, to amend Sections 10752, 10753.1, 10753.2, and 10753.9 of, and to add Sections 225 and 11006 to, the Revenue and Taxation Code, and to amend Sections 260, 4000, 4004, 4150.1, 4458, 5000, 5011, 5014, 5015, 5016, 5017, 5101, 5103, 5106, 5108, 5204, 5301, 5302, 5305, 5902, 6275, 6285, 6291, 6293, 6367, 8000, 8054, 9250.7, 9250.8, 9250.10, 9250.13, 9250.14, 9250.19, 9260, 9261, 9400, 9406, 9408, 36010, and 36109 of, and to add Sections 288, 289, 468, 4000.6, 5014.1, 9400.1, 9406.1, 9554.2, 27910, and 42030.1 to, and to repeal Sections 6851 and 6851.5 of, and to amend and renumber Section 390 of, the Vehicle Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. (a) The Legislature finds and declares that it is necessary to convert California's system of commercial vehicle registration from an unladen weight system to a gross vehicle weight system and to initiate a permanent trailer identification program. Furthermore, it is the intent of the Legislature that this conversion be revenue neutral to all cities and counties and all unladen weight fee system recipients.

(b) For the purposes of this act, ''revenue neutrality'' requires that all recipients of the fees collected under the system in effect on December 31, 2000, shall receive the same level of funding, with the same degree of flexibility, after the conversion to the system created by this act.

(c) This act shall be known, and may be cited as, the Commercial Vehicle Registration Act of 2001.

SEC. 2. Section 13340 of the Government Code is amended to read:

13340. (a) Except as provided in subdivision (b), on and after July 1, 2001, no moneys in that fund that, by any statute other than a Budget Act, is continuously appropriated without regard to fiscal years, may be encumbered unless the Legislature, by statute, specifies that the moneys in the fund are appropriated for encumbrance.

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

(1) The scheduled disbursement of any local sales and use tax proceeds to an entity of local government pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) The scheduled disbursement of any transactions and use tax proceeds to an entity of local government pursuant to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code.

(3) The scheduled disbursement of any funds by a state or local agency or department that issues bonds and administers related programs for which funds are continuously appropriated as of June 30, 2001.

(4) Moneys that are deposited in proprietary or fiduciary funds of the California State University and that are continuously appropriated without regard to fiscal years.

(5) The scheduled disbursement of any motor vehicle license fee revenues, including the General Fund appropriations made pursuant to Sections 11000 and 11000.1 of the Revenue and Taxation Code, to an entity of local government pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code).

(6) The scheduled disbursement of any motor vehicle license fee revenues, including the General Fund appropriations made pursuant to Sections 11006 of the Revenue and Taxation Code, to an entity of local government pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code).

(7) The scheduled disbursement of moneys made pursuant to Section 29145.

(8) The scheduled disbursement of moneys made pursuant to Section 43402.

SEC. 3. Section 29145 is added to the Government Code, to read:

29145. (a) Commencing on December 31, 2001, the County Successor to Vehicle License Fee Resulting From IRP Conformity Account is hereby created as a special fund in the General Fund. All money in the County Successor to Vehicle License Fee Resulting From IRP Conformity Account is hereby continuously appropriated, without regard to fiscal years, to the Controller for allocation in accordance with subdivision (c).

(b) All of the following shall occur on a quarterly basis:

(1) The Department of Motor Vehicles, in consultation with the Department of Finance, shall estimate the revenues that represent the amount of vehicle license fees which would be paid by trailers and semitrailers pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code) had Sections 5014.1 and 9400.1 of the Vehicle Code not been enacted, which would be allocated to a county or city and county

pursuant to subdivision (d) of Section 11005 of the Revenue and Taxation Code.

(2) The Department of Motor Vehicles shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(c) The Controller shall then transfer from the General Fund, on a quarterly basis to each county, including a city and county, from the total sums computed pursuant to subdivision (b) an amount which represents the total population of that county bears to the total population of all the counties in the state, as determined pursuant to subdivision (d) of Section 11005 of the Revenue and Taxation Code.

(d) Funds received by any county, or city and county pursuant to this section may be used by that county, or city and county in the same manner as if those funds were received pursuant to the provisions of subdivision (e) of Section 11005 of the Revenue and Taxation Code.

SEC. 4. Section 43402 is added to the Government Code, to read:

43402. (a) Commencing on December 31, 2001, the City Successor to Vehicle License Fee Resulting From IRP Conformity Account is hereby created as a special fund in the General Fund. All money in the City Successor to Vehicle License Fee Resulting From IRP Conformity Account is hereby continuously appropriated, without regard to fiscal years, to the Controller for allocation in accordance with subdivision (c).

(b) All of the following shall occur on a quarterly basis:

(1) The Department of Motor Vehicles, in consultation with the Department of Finance, shall estimate the revenues that represent the amount of vehicle license fees which would be paid by trailers and semitrailers pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code) had Sections 5014.1 and 9400.1 of the Vehicle Code not been enacted, which would be allocated to a city or city and county pursuant to subdivision (c) of Section 11005 of the Revenue and Taxation Code.

(2) The Department of Motor Vehicles shall inform the Controller, in writing, of the amount estimated under paragraph (1).

(c) The Controller shall then transfer from the General Fund, on a quarterly basis to each city, including a city and county, from the total sums computed pursuant to subdivision (b) an amount that represents the total population of that city bears to the total population of all the cities in the state, as determined pursuant to subdivision (c) of Section 11005 of the Revenue and Taxation Code.

(d) Funds received by any city pursuant to this section may be used by that city, or city and county in the same manner as if those funds were received pursuant to the provisions of subdivision (e) of Section 11005 of the Revenue and Taxation Code.

SEC. 5. Section 225 is added to the Revenue and Taxation Code, to read:

225. A trailer or semitrailer that has a valid identification plate issued to it pursuant to Section 5014.1 of the Vehicle Code is exempt from personal property taxation.

SEC. 6. Section 6275 of the Revenue and Taxation Code is amended to read:

6275. (a) Every person making any retail sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft as defined in this article, is a retailer for the purposes of this part of the vehicle, vessel, or aircraft, regardless of whether he or she is a retailer by reason of other provisions of this part, unless another person is the retailer, as provided in subdivision (b).

(b) Every person, licensed or certificated under the Health and Safety Code or the Vehicle Code as a dealer, is the retailer of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, when a retail sale of the vehicle is made through him or her and that person provides to the Department of Housing and Community Development or the Department of Motor Vehicles a notice of transfer with respect to the vehicle pursuant to Section 18080.5 of the Health and Safety Code or Section 5901 or Section 38200 of the Vehicle Code. That person shall hold a seller's permit and remit tax to the board with respect to those sales in the same manner as a dealer licensed or certificated under the Vehicle Code and making sales on his or her own account. For purposes of this subdivision, ''sale'' does not include a lease.

SEC. 6.1. Section 6285 of the Revenue and Taxation Code is amended to read:

6285. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code, or of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent

trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft, when either of the following occurs:

(a) The person selling the property is either the parent, grandparent, child, grandchild, or spouse, or the brother or sister if the sale between that brother or sister is between two minors related by blood or adoption, of the purchaser, and the person selling is not engaged in the business of selling the type of property for which the exemption is claimed.

(b) The sale is to a revocable trust in which all of the following occur:

(1) The seller has an unrestricted power to revoke the trust.

(2) The sale does not result in any change in the beneficial ownership of the property.

(3) The trust provides that upon revocation the property will revert wholly to the seller.

(4) The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.

SEC. 6.2. Section 6291 of the Revenue and Taxation Code is amended to read:

6291. Notwithstanding Section 6451, the use taxes imposed by this part with respect to the storage, use or other consumption in this state of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code, or of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of a vessel or an aircraft as defined in this chapter are due and payable by the purchaser at the time the storage, use, or other consumption of the property first becomes taxable. Delinquency penalties and interest with respect to use tax for mobilehomes or commercial coaches registered annually with the Department of Housing and Community Development or for vehicles registered with the Department of Motor Vehicles shall be as provided in Section 6292. Delinquency penalties and interest with respect to use tax for vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code shall be as provided in Section 6293. Delinquency penalties and interest with respect to use tax for vessels and aircraft shall be imposed as if the due date of the tax were fixed by Section 6451.

SEC. 6.3. Section 6293 of the Revenue and Taxation Code is amended to read:

6293. (a) Except when the sale is by lease, when a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code, or a person required to hold a seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 by reason of the number, scope, and character of his or her sales of those vehicles, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 38211 of the Vehicle Code.

(b) If the purchaser makes an application to that department which is not timely, and is subject to penalty because of delinquency in effecting identification or transfer of ownership of the vehicle, he or she then becomes liable also for penalty as specified in Section 6591 of this code, but no interest shall accrue.

(c) Application to that department by the purchaser relieves the purchaser of the obligation to file a return with the board under Section 6452.

(d) If the purchaser does not make application to that department, or does not pay the amount of use tax due, or files a return with the board under Section 6455 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

SEC. 6.4. Section 6367 of the Revenue and Taxation Code is amended to read:

6367. There are exempted from the taxes imposed by this part the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale. This exemption does not apply to the gross receipts from the sale of, or to the storage, use, or other consumption in this state of, a mobilehome or commercial coach required to be annually registered under the Health and Safety Code, a vessel or aircraft, as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part, or a vehicle required to be registered under the Vehicle Code or a vehicle required to be identified under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code. This section shall not preclude the exemption afforded under Section 6281.

SEC. 6.8. Section 10752 of the Revenue and Taxation Code is amended to read:

10752. The annual amount of the license fee for any vehicle, other than a trailer or semitrailer or a trailer coach that is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be a sum equal to 2 percent of the market value of the vehicle as determined by the department.

SEC. 7. Section 10753.1 of the Revenue and Taxation Code is amended to read:

10753.1. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and, thereafter, a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of that number of classes as will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 85 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 85 percent of that sum; for the third year, 70 percent of that sum; for the fourth year, 55 percent of that sum; for the fifth year, 40 percent of that sum; for the sixth year, 30 percent of that sum; for the seventh year, 25 percent of that sum; for the eighth year, 15 percent of that sum; for the ninth year, 10 percent of that sum; and for the 10th year and each succeeding year, 5 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall become operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 8. Section 10753.2 of the Revenue and Taxation Code is amended to read:

10753.2. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle, other than a trailer or semitrailer, in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and thereafter a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of a number of classes that will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 100 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 90 percent of that sum; for the third year, 80 percent of that sum; for the fourth year, 70 percent of that sum; for the fifth year, 60 percent of that sum; for the sixth year, 50 percent of that sum; for the seventh year, 40 percent of that sum; for the eighth year, 30 percent of that sum; for the ninth year, 25 percent of that sum; and for the 10th year, 20 percent of that sum; and for the 11th year and each succeeding year, 15 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination

by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 9. Section 10753.9 of the Revenue and Taxation Code is amended to read:

10753.9. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle, other than a trailer or semitrailer, in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and thereafter a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of that number of classes as will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year ownership of a used vehicle was sold or transferred to the current registered owner, shall be as follows: for the first year, 85 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 85 percent of that sum; for the third year, 70 percent of that sum; for the fourth year, 55 percent of that sum; for the fifth year, 40 percent of that sum; for the sixth year, 30 percent of that sum; for the seventh year, 25 percent of that sum; for the eighth year, 15 percent of that sum; for the ninth year, 10 percent of that sum; for the 10th year and each succeeding year, 5 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall become operative and shall apply to both of the following:

(1) Initial or original registration of any vehicle never before registered in this state for which fees become due on July 15, 1991, and on or before July 31, 1991.

(2) Renewal of registration of any vehicle whose registration expires on or before July 31, 1991.

SEC. 10. Section 11006 is added to the Revenue and Taxation Code, to read:

11006. (a) Commencing on December 31, 2001, the Controller, in consultation with the Department of Motor Vehicles and the Department of Finance, shall recalculate the distribution of the amount of motor vehicle license fees paid by commercial vehicles that are subject to Section 9400.1 of the Vehicle Code and transfer those sums as follows in the following order:

(1) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities as set forth in Section 25350.6 of the Government Code, which shall be transferred so as to pay that allocation.

(2) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code, which would be in the same amount had the amendments made to Section 10752 of the Revenue and Taxation Code made by the act that added this section had not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Account Local Revenue Fund of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(3) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17604 of the Welfare and Institutions Code, which would be in the same amount had the amendments made to Section 10752 of the Revenue and Taxation Code made by the act that added this section had not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17604 of the Welfare and Institutions Code.

(4) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities, other than those referred to in paragraph (1), as set forth in Section 25350 and following of, Section 53584 and following of, 5450 and following of, the Government Code, which shall be transferred so as to pay those allocations.

(b) The balance of any funds not otherwise allocated pursuant to subdivision (a) shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and

allocated to each city, county, and city and county as otherwise provided by law.

(c) In enacting paragraphs (1) and (4) of subdivision (a), the Legislature declares that paragraphs (1) and (4) of subdivision (a), shall not be construed to obligate the State of California to make any payment to a city, city and county, or county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a city, city and county, or county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or so guaranteed if the State of California had not so bound itself prior to the enactment of this section.

SEC. 11. Section 260 of the Vehicle Code is amended to read:

260. (a) A ''commercial vehicle'' is a motor vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) Passenger vehicles which are not used for the transportation of persons for hire, compensation, or profit and housecars are not commercial vehicles. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is not a commercial vehicle.

(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6.

SEC. 12. Section 288 is added to the Vehicle Code, to read:

288. ''Declared combined gross weight'' equals the total unladen weight of the combination of vehicles plus the heaviest load that will be transported by that combination of vehicles.

SEC. 13. Section 289 is added to the Vehicle Code, to read:

289. ''Declared gross vehicle weight'' means weight that equals the total unladen weight of the vehicle plus the heaviest load that will be transported on the vehicle.

SEC. 14. Section 390 of the Vehicle Code is amended and renumbered to read:

350. (a) ''Gross vehicle weight rating'' (GVWR) means the weight specified by the manufacturer as the loaded weight of a single vehicle.

(b) Gross combination weight rating (GCWR) means the weight specified by the manufacturer as the loaded weight of a combination or articulated vehicle. In the absence of a weight specified by the manufacturer, GCWR shall be determined by adding the GVWR of the power unit and the total unladen weight of the towed units and any load thereon.

SEC. 15. Section 468 is added to the Vehicle Code, to read:

468. The department shall commence the ''permanent trailer identification plate program,'' on or after December 31, 2001, and may designate the method, consistent with this code, to be used by trailers, as defined in Section 5014.1, to receive an assigned permanent trailer identification plate for all trailers, except for trailer coaches and park trailers as described in subdivision (b) of Section 18010 of the Health and Safety Code, for identification purposes. An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate. The plate shall be in a size and design as determined by the department.

SEC. 16. Section 4000 of the Vehicle Code is amended to read:

4000. (a) (1) No person shall drive, move, or leave standing upon a highway, or in an offstreet public parking facility, any motor vehicle, trailer, semitrailer, pole or pipe dolly, or logging dolly, unless it is registered and the appropriate fees have been paid under this code or registered under the permanent trailer identification program, except that an off-highway motor vehicle which displays an identification plate or device issued by the department pursuant to Section 38010 may be driven, moved, or left standing in an offstreet public parking facility without being registered or paying registration fees.

(2) For purposes of this subdivision, ''offstreet public parking facility'' means either of the following:

(A) Any publicly owned parking facility.

(B) Any privately owned parking facility for which no fee for the privilege to park is charged and which is held open for the common public use of retail customers.

(3) This subdivision does not apply to any motor vehicle stored in a privately owned offstreet parking facility by, or with the express permission of, the owner of the privately owned offstreet parking facility.

(b) No person shall drive, move, or leave standing upon a highway any motor vehicle, as defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, which has been registered in violation of Part 5 (commencing with Section 43000) of that Division 26.

(c) Subdivisions (a) and (b) do not apply to off-highway motor vehicles operated pursuant to Sections 38025 and 38026.5.

(d) This section does not apply, following payment of fees due for registration, during the time that registration and transfer is being withheld by the department pending the investigation of any use tax due under the Revenue and Taxation Code.

(e) Subdivision (a) does not apply to a vehicle that is towed by a tow truck on the order of a sheriff, marshal, or other official acting pursuant to a court order or on the order of a peace officer acting pursuant to this code.

(f) Subdivision (a) applies to a vehicle that is towed from a highway or offstreet parking facility under the direction of a highway service organization when that organization is providing emergency roadside assistance to that vehicle. However, the operator of a tow truck providing that assistance to that vehicle is not responsible for the violation of subdivision (a) with respect to that vehicle. The owner of an unregistered vehicle that is disabled and located on private property, shall obtain a permit from the department pursuant to Section 4003 prior to having the vehicle towed on the highway.

(g) For purposes of this section, possession of a California driver's license by the registered owner of a vehicle shall give rise to a rebuttable presumption that the owner is a resident of California.

SEC. 17. Section 4000.6 is added to the Vehicle Code, to read:

4000.6. Any commercial motor vehicle, singly or in combination, that operates with a declared gross vehicle weight that exceeds 10,000 pounds shall be registered pursuant to Section 9400.1.

(a) A person submitting an application for registration of a commercial motor vehicle operated in combination with a semitrailer, trailer, or any combination thereof, shall include the declared combined gross weight of all units when applying for registration with the department.

(b) This section does not apply to pickups nor to any commercial motor vehicle or combination that does not exceed 10,000 pounds gross vehicle weight.

(c) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, having reason to believe that a motor vehicle, singly or in combination, is being operated in excess of its registered declared gross vehicle weight, may require the driver to stop and submit to an inspection or weighing of the vehicle or vehicles and an inspection of registration documents.

SEC. 18. Section 4004 of the Vehicle Code is amended to read:

4004. (a) (1) Commercial motor vehicles meeting the registration requirements of a foreign jurisdiction, and subject to registration but not entitled to exemption from registration or licensing under any of the provisions of this code or any agreements, arrangements, or declarations made under Article 3 (commencing with Section 8000) of Chapter 4, may, as an alternate to registration, secure a temporary registration to operate in this state for a period of not to exceed 90 days, or a trip permit to operate in this state for a period of four consecutive days.

(2) Each trip permit shall authorize the operation of a single commercial motor vehicle for a period of not more than four consecutive days, commencing with the day of first use and three consecutive days thereafter. Every permit shall identify, as the department may require, the commercial motor vehicle for which it is issued. Each trip permit shall

be completed prior to operation of the commercial motor vehicle on any highway in this state and shall be carried in the commercial motor vehicle to which it applies and shall be readily available for inspection by a peace officer. Each permit shall be valid at the time of inspection by a peace officer only if it has been completed as required by the department and has been placed in the appropriate receptacle as required by this section. It is unlawful for any person to fail to comply with the provisions of this section.

(b) The privilege of securing and using a trip permit or a temporary registration not to exceed 90 days shall not extend to the following:

(1) Any vehicle which is based within this state and which is operated by a person having an established place of business within this state. For purposes of this paragraph, a commercial motor vehicle shall be considered to be based in this state if it is primarily operated or dispatched from or principally garaged or serviced or maintained at a site with an address within this state.

(2) Vehicles registered in any jurisdiction with which the State of California does not have vehicle licensing reciprocity, unless the Reciprocity Commission extends the privilege, by rule, after hearing.

(c) The temporary registration or trip permit authorized pursuant to this section shall include the diesel fuel permit number issued by the State Board of Equalization. Any temporary registration or trip permit for a diesel power unit which does not include this information shall be invalid and shall subject the operator to citation for violation of subdivision (a) of Section 4000. All fees for registration of commercial motor vehicles shall be due upon the issuance of a citation, unless the person in whose name the permit was issued can produce proof of issuance of a California fuel tax permit prior to the date of the violation.

(d) Any trailer or semitrailer identified in paragraph (1) of subdivision (a) of Section 5014.1 that enters the state without a currently valid license plate issued by California or another jurisdiction shall be immediately subject to full identification fees as specified in subdivision (e) of Section 5014.1.

SEC. 19. Section 4150.1 of the Vehicle Code is amended to read:

4150.1. (a) (1) In addition to the requirements of Section 4150, application for the original registration of a commercial motor vehicle specified in Section 34500 shall include a declaration, made by the owner to the department upon the appropriate form furnished by it, that the owner is aware of the applicable motor carrier safety regulations adopted by the Department of the California Highway Patrol pursuant to Section 34501.

(2) The registered owner, lessee, or designee may make this declaration on a single form for all commercial motor vehicles registered in the registered owner's name.

(b) (1) On a form provided by the department, the registered owner of record, lessee, or the owner's designee shall certify and report the declared gross vehicle weight of any commercial motor vehicle, singly or in combination, in excess of 10,000 pounds declared gross vehicle weight.

(2) A single form may be used or referenced for multiple vehicles of like declared gross vehicle weight.

SEC. 20. Section 4458 of the Vehicle Code is amended to read:

4458. If both license plates or a permanent trailer identification plate are lost by or stolen from the registered owner, the registered owner shall immediately notify a law enforcement agency, and shall immediately apply to the department for new plates in lieu of the plates stolen or lost. The department shall in every proper case, except in the case of plates which are exempt from fees, cause to be issued applicable license plates of a different number and assign the registration number to the vehicle for which the plates are issued.

SEC. 21. Section 5000 of the Vehicle Code is amended to read:

5000. (a) Identification plates issued for trailers, semitrailers, motor-driven cycles, and pole and pipe dollies, and such vehicles as are exempt from the payment of registration fees under this code shall display suitable distinguishing marks or symbols, and the registration numbers assigned to each class of vehicles shall run in a separate numerical series, except that registration numbers assigned to vehicles exempt from the payment of registration fees may run in several separate numerical series.

(b) Vehicles subject to Sections 9400 and 9400.1 shall be issued license plates with suitable distinguishing marks or symbols distinguishing them from other license plates issued.

(c) Vehicles subject to Section 5014.1 shall be issued permanent identification plates with suitable distinguishing marks or symbols that distinguish them from other license plates.

SEC. 22. Section 5011 of the Vehicle Code is amended to read:

5011. (a) Every piece of special construction equipment, special mobile equipment, cemetery equipment, every tow dolly, trailer, semitrailer, and every logging vehicle shall display an identification plate issued pursuant to Section 5014.

(b) Effective January 1, 1986, all existing identification plates are canceled. Owners of vehicles specified in subdivision (a) shall apply for identification plates pursuant to Section 5014 or 5016.5.

SEC. 23. Section 5014 of the Vehicle Code is amended to read:

5014. An application by a person other than a manufacturer or dealer for an identification plate for special construction equipment, cemetery equipment, special mobile equipment, logging vehicle, cotton trailer, or farm trailer as specified in Section 36109, a vehicle that is farmer-owned

and used as provided in subdivision (b) of Section 36101, a motor vehicle which is farmer-owned and operated and used as provided in subdivision (a) of Section 36101, an automatic bale wagon operated as specified in subdivision (a) or (b) of Section 36102, or a farm trailer that is owned, rented, or leased by a farmer and is operated and used as provided in subdivision (b) of Section 36010, shall include the following:

(a) The true, full name and the driver's license or identification card number, if any, of the owner.

(b) A statement by the owner of the use or uses which he or she intends to make of the equipment.

(c) A description of the vehicle, including any distinctive marks or features.

(d) A photograph of the vehicle. Only one photograph of one piece of equipment shall be required to be attached to the application when identification plates are to be obtained for more than one piece of equipment, each of which is of the same identical type.

(e) Other information as may reasonably be required by the department to determine whether the applicant is entitled to be issued an identification plate.

(f) A service fee of seven dollars ($7) for each vehicle. The plates shall be renewed between January 1 and February 4 every five calendar years, commencing in 1986. Any part of the year of the first application constitutes a calendar year. An application for renewal of an identification plate shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

SEC. 24. Section 5014.1 is added to the Vehicle Code, to read:

5014.1. (a) Upon the implementation of the permanent trailer identification plate program, the following applies:

(1) All trailers will receive an identification certificate upon conversion to the permanent trailer identification program. The following trailers, except as provided in Section 5101, may be assigned a trailer identification plate by the department in accordance with this section or an election may be made to keep the current plate on the expiration date of registration:

(A) Logging dolly.

(B) Pole or pipe dolly.

(C) Semitrailer.

(D) Trailer.

(E) Trailer bus.

(2) An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate.

(3) Trailer coaches and park trailers, as described in subdivision (b) of Section 18010 of the Health and Safety Code, are exempted from the permanent trailer identification plate program.

(b) The permanent trailer identification plate shall be in a size and design as determined by the department.

(c) The permanent trailer identification plate shall not expire.

(d) Upon sale or transfer of the commercial trailer or semitrailer, the assigned permanent trailer identification plate remains with the trailer or semitrailer for the life of the vehicle except as provided in Section 5101. Upon transfer of ownership, a new identification certificate shall be issued.

(e) A service fee, sufficient to pay at least the entire actual costs to the department, not to exceed twenty dollars ($20) shall be assessed by the department upon assigning a permanent trailer identification plate.

(f) A fee of seven dollars ($7) for substitute permanent trailer identification plates or certificates shall be charged.

(g) All outstanding trailer and semitrailer license plates and registration indicia that were issued under this code on December 31, 2001, shall be considered valid.

(h) Every trailer which is submitted for original registration in this state will be issued a permanent trailer identification plate and identification certificate.

(i) A service fee of ten dollars ($10) shall be charged for each vehicle renewing its trailer plate or permanent trailer identification plate. These plates shall be renewed on the anniversary date of either the trailer plate expiration date or the date of issuance of the original permanent trailer identification plate, every five calendar years commencing in 2007.

SEC. 25. Section 5015 of the Vehicle Code is amended to read:

5015. (a) The application for an identification plate for special construction equipment, special mobile equipment, cemetery equipment, and any logging vehicle shall be made before that piece of equipment is moved over a highway.

(b) The application for an identification plate for a cotton trailer or a farm trailer as specified in Section 36109, a vehicle that is farmer-owned and used as provided in subdivision (b) of Section 36101, a motor vehicle that is farmer-owned and operated and used as provided in subdivision (a) of Section 36101, or an automatic bale wagon operated as specified in subdivision (a) or (b) of Section 36102 shall be made before any such piece of equipment is moved over a highway.

(c) The application for a permanent trailer identification plate, as described in Section 5014.1, shall be made prior to the equipment or vehicle described in subdivision (a) being moved, towed, or left standing on any highway or in any offstreet public parking facility.

SEC. 26. Section 5016 of the Vehicle Code is amended to read:

5016. Upon proper application and payment of the fees specified in Section 5014.1 or 9261, the department shall issue an identification plate and an identification certificate for the piece of equipment, vehicle, trailer, semitrailer, or implement of husbandry for which application is made.

SEC. 27. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall within 10 days notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraph (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. When an identification certificate has been issued to a trailer or semitrailer, the owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. A service fee of seven dollars ($7) shall be charged according to subdivision (c) of Section 9261. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 28. Section 5101 of the Vehicle Code is amended to read:

5101. Any person who is the registered owner or lessee of a passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer registered or certificated with the department, or who makes application for an original registration or renewal registration of that vehicle, may, upon payment of the fee prescribed in Section 5106, apply to the department for environmental license plates, in the manner prescribed in Section 5105, which plates shall be affixed to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which registration is sought in lieu of the regular license plates.

SEC. 28.5. Section 5101 of the Vehicle Code is amended to read:

5101. Any person who is the registered owner or lessee of a passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer registered or certificated with the department, or who makes application for an original registration or renewal registration of that vehicle, may, upon payment of the fee prescribed in Section 5106, apply to the department for environmental license plates, in the manner prescribed in Section 5105, which plates shall be affixed to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which registration is sought in lieu of the regular license plates.

SEC. 29. Section 5103 of the Vehicle Code is amended to read:

5103. ''Environmental license plates,'' as used in this article, means license plates or permanent trailer identification plates that have displayed upon them the registration number assigned to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner or lessee of the vehicle.

SEC. 29.5. Section 5103 of the Vehicle Code is amended to read:

5103. ''Environmental license plates,'' as used in this article, means license plates or permanent trailer identification plates that have displayed upon them the registration number assigned to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which a registration number was issued in a combination of letters or numbers, or both, requested by the owner or lessee of the vehicle.

SEC. 30. Section 5106 of the Vehicle Code is amended to read:

5106. (a) Except as provided in Section 5101.7, in addition to the regular registration fee or a permanent trailer identification fee, the applicant shall be charged a fee of forty dollars ($40).

(b) In addition to the regular renewal fee or a permanent trailer identification fee for the vehicle to which the plates are assigned, the applicant for a renewal of the plates shall be charged an additional fee of twenty-five dollars ($25). An applicant with a permanent trailer identification plate shall be charged an annual fee of twenty-five dollars ($25). However, applicants for renewal of prisoner-of-war special

license plates issued under Section 5101.5 shall not be charged the additional renewal fee under this subdivision.

(c) When payment of renewal fees is not required as specified in Section 4000, the holder of any environmental license plate may retain the plate upon payment of an annual fee of twenty-five dollars ($25). The fee shall be due at the expiration of the registration year of the vehicle to which the environmental license plate was last assigned. However, applicants for retention of prisoner-of-war special license plates issued under Section 5101.5 shall not be charged the additional retention fee under this subdivision.

(d) Notwithstanding Section 9265, the applicant for a duplicate environmental license plate or a duplicate, replacement commemorative 1984 Olympic reflectorized license plate shall be charged a fee of thirty dollars ($30).

SEC. 31. Section 5108 of the Vehicle Code is amended to read:

5108. Whenever any person who has been issued environmental license plates applies to the department for transfer of the plates to another passenger vehicle, commercial motor vehicle, trailer, or semitrailer a transfer fee of twenty dollars ($20) shall be charged in addition to all other appropriate fees.

SEC. 32. Section 5204 of the Vehicle Code is amended to read:

5204. (a) Except as provided by subdivisions (b) and (c), a tab shall indicate the year of expiration and a tab shall indicate the month of expiration. Current month and year tabs shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued, and, when so attached, the license plate with the tabs shall, for the purposes of this code, be deemed to be the license plate, except that truck tractors, and commercial motor vehicles having a declared gross vehicle weight of 10,001 pounds or more, shall display the current month and year tabs upon the front license plate assigned to the truck tractor or commercial motor vehicle. Vehicles that fail to display current month and year tabs or display expired tabs are in violation of this section.

(b) The requirement of subdivision (a) that the tabs indicate the year and the month of expiration does not apply to fleet vehicles subject to Article 9.5 (commencing with Section 5300) or vehicles defined in Section 468.

(c) Subdivision (a) does not apply when proper application for registration has been made pursuant to Section 4602 and the new indicia of current registration have not been received from the department.

(d) This section is enforceable against any motor vehicle that is driven, moved, or left standing upon a highway, or in an offstreet public parking facility, in the same manner as provided in subdivision (a) of Section 4000.

SEC. 33. Section 5301 of the Vehicle Code is amended to read:

5301. (a) Notwithstanding any other provision of this code and Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code, the registered owner or lessee of a fleet of vehicles consisting of commercial motor vehicles base plated in the state under Article 4 (commencing with Section 8050) of Chapter 4, or passenger automobiles may, upon payment of appropriate fees, apply to the department for permanent license plates or decals and registration cards.

(b) Fleets shall consist of at least 50 motor vehicles to qualify for this program. However, the department may provide for permanent fleet registration through an association providing a combination of fleets of motor vehicles of 250 or more vehicles with no individual fleet of fewer than 25 motor vehicles. An association submitting an application of participation in the program shall provide within the overall application a listing identifying the registered owner of each fleet and the motor vehicles within each fleet. Identification of the motor vehicles as provided in this article applies to the ownership of the motor vehicles and not the association submitting the application.

(c) With the concurrence of both the department and the participant, the changes made in this section by the enactment of the Commercial Vehicle Registration Act of 2001 shall not affect those participants who were lawfully participating in the permanent fleet registration program on December 31, 2001. Any fleet that qualifies for permanent fleet registration as of December 31, 2001, will continue to count trailers to qualify as a fleet until January 1, 2007. However, five years following the implementation of the permanent trailer identification program, all participants in the permanent fleet registration program shall meet the requirements of this section in order to continue enrollment in the program described in this section.

SEC. 34. Section 5302 of the Vehicle Code is amended to read:

5302. (a) Motor vehicles registered in any state other than California shall not be permitted to participate in this program.

(b) Section 4604 does not apply to vehicles registered under this article.

(c) The department may conduct an audit of the records of each fleet owner or lessee of the vehicle fleets electing to participate in the program. The department shall be fully reimbursed by the fleet owner or lessee for the costs of conducting the audits.

(d) Vehicles registered under this article shall display in a conspicuous place on both the right and the left side of each motor vehicle the name, trademark, or logo of the company. The display of the name, trademark, or logo shall be in letters in sharp contrast to the background and shall be of a size, shape, and color that is readily legible during daylight hours from a distance of 50 feet.

(e) A motor vehicle under 6,000 pounds unladen weight that is owned or leased by a public utility may be registered under this article by displaying the permanent fleet registration number on both the right and left side or on the front and rear of the motor vehicle. The display shall be in sharp contrast to the background and shall be of a size, shape, and color that is readily legible during daylight hours from a distance of 50 feet.

SEC. 35. Section 5305 of the Vehicle Code is amended to read:

5305. In addition to any other fees due for motor vehicles registered pursuant to this article, the department may charge and collect a service fee of one dollar ($1) for each fleet motor vehicle at the time the initial application is submitted to the department and at the time of registration renewal of each fleet vehicle.

SEC. 36. Section 5902 of the Vehicle Code is amended to read:

5902. (a) Whenever any person has received as transferee a properly endorsed certificate of ownership, that person shall, within 10 days thereafter, forward the certificate with the proper transfer fee to the department and thereby make application for a transfer of registration. The certificate of ownership shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

(b) An application for a transfer of registration of a commercial motor vehicle specified in Section 34500 shall include a declaration, made by the owner to the department upon the appropriate form furnished by it, that the owner is aware of the applicable motor carrier safety regulations adopted by the Department of the California Highway Patrol pursuant to Section 34501. A registered owner, lessee, or designee may make this declaration on a single form for all commercial motor vehicles registered in the registered owner's name.

(c) An application for a transfer of a commercial motor vehicle that exceeds 10,000 pounds declared gross vehicle weight, as specified in Section 34500, shall include the notification, made by the new registered owner, or that owner's designee, of the declared gross vehicle weight of the commercial motor vehicle singly or in combination. A registered owner, lessee, or that owner's designee, may make this certification on a single form provided by the department for all commercial motor vehicles registered in the owner's name.

SEC. 37. Section 6851 of the Vehicle Code is repealed.

SEC. 38. Section 6851.5 of the Vehicle Code is repealed.

SEC. 39. Section 8000 of the Vehicle Code is amended to read:

8000. The Reciprocity Commission may enter into agreements with foreign jurisdictions that provide for the exemption of fees for commercial vehicles if the foreign jurisdictions provide equivalent exemptions to vehicles registered in this state. The agreements shall be

applicable to vehicles that are properly licensed and registered in the foreign jurisdictions. The commission may also enter into agreements that provide for the exemption of regulatory fees which are, or may be imposed, by the Public Utilities Code or the department.

SEC. 40. Section 8054 of the Vehicle Code is amended to read:

8054. (a) Upon the application for transfer of ownership of a fleet of vehicles apportionately registered pursuant to this article, the department shall permit registration in the new owners name without reassessing the registration and vehicle license fees, if the application of the new ownership is for the same fleet interstate operation as the previous owner.

(b) The new owner, lessee, or their designee, shall certify the declared gross vehicle weight of the vehicle or vehicles on a single form for all commercial motor vehicles registered in the fleet owner's or lessee's name. The department shall reassess the weight fees if the declared gross vehicle weight is increased. The weight fees will be assessed at a prorated rate.

SEC. 41. Section 9250.7 of the Vehicle Code is amended to read:

9250.7. (a) (1) A service authority established under Section 22710 may impose a service fee of one dollar ($1) on all vehicles, except trailers and semitrailers described in subdivision (a) of Section 5014.1, registered to an owner with an address in the county that established the service authority. The fee shall be paid to the department at the time of registration, or renewal of registration, or when renewal becomes delinquent, except on vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) The department, after deducting its administrative costs, shall transmit, at least quarterly, the net amount collected pursuant to subdivision (a) to the Treasurer for deposit in the Abandoned Vehicle Trust Fund, which is hereby created. All money in the fund is continuously appropriated to the Controller for allocation to a service authority that has an approved abandoned vehicle abatement program pursuant to Section 22710, and for payment of the administrative costs of the Controller. After deduction of its administrative costs, the Controller shall allocate the money in the Abandoned Vehicle Trust Fund to each service authority in proportion to the revenues received from the fee imposed by that authority pursuant to subdivision (a). If any funds received by a service authority pursuant to this section are not

expended to abate abandoned vehicles pursuant to an approved abandoned vehicle abatement program within 90 days of the close of the fiscal year in which the funds were received and the amount of those funds exceeds the amount expended by the service authority for the abatement of abandoned vehicles in the previous fiscal year, a fee imposed pursuant to subdivision (a) shall be suspended for one year, commencing the following January 1.

(c) The fee imposed by a service authority shall remain in effect only for a period of 10 years from the date that the actual collection of the fee commenced.

SEC. 41.5. Section 9250.7 of the Vehicle Code is amended to read:

9250.7. (a) (1) A service authority established under Section 22710 may impose a service fee of one dollar ($1) on all vehicles, except trailers and semitrailers described in subdivision (d) of Section 5014.1, registered to an owner with an address in the county that established the service authority. The fee shall be paid to the department at the time of registration, or renewal of registration, or when renewal becomes delinquent, except on vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) The department, after deducting its administrative costs, shall transmit, at least quarterly, the net amount collected pursuant to subdivision (a) to the Treasurer for deposit in the Abandoned Vehicle Trust Fund, which is hereby created. All money in the fund is continuously appropriated to the Controller for allocation to a service authority that has an approved abandoned vehicle abatement program pursuant to Section 22710, and for payment of the administrative costs of the Controller. After deduction of its administrative costs, the Controller shall allocate the money in the Abandoned Vehicle Trust Fund to each service authority in proportion to the revenues received from the fee imposed by that authority pursuant to subdivision (a). If any funds received by a service authority pursuant to this section are not expended to abate abandoned vehicles pursuant to an approved abandoned vehicle abatement program that has been in existence for at least two full fiscal years within 90 days of the close of the fiscal year in which the funds were received and the amount of those funds exceeds the amount expended by the service authority for the abatement of abandoned vehicles in the previous fiscal year, a fee imposed pursuant

to subdivision (a) shall be suspended for one year, commencing the July 1 following the Controller's determination pursuant to subdivision (e).

(c) Every service authority that imposes a fee authorized by subdivision (a) shall issue a fiscal yearend report to the Controller on or before October 31 summarizing each of the following:

(1) The total revenues received by the service authority for the previous fiscal year.

(2) The total expenditures by each service authority for the previous fiscal year.

(3) The total number of vehicles abated during the previous fiscal year.

(4) The average cost per abatement during the previous fiscal year.

(5) Any additional, unexpended fee revenues for the service authority for the previous fiscal year.

(d) Each service authority that fails to submit the report required pursuant to subdivision (c) by November 30 of each year shall have the fee suspended for one year pursuant to subdivision (b).

(e) On or before January 1, 2002, and on or before January 1 annually thereafter the Controller shall review the fiscal yearend reports submitted by each service authority pursuant to subdivision (c) to determine if fee revenues are being utilized in a manner consistent with the service authority's program. If the use of the fee revenues is not consistent with the service authority's program, or if an excess of fee revenue exists beyond that expended or to be expended as a part of the service authority's program, the Controller shall suspend the authority to collect the fee for one year pursuant to subdivision (b). The Controller shall instruct the Department of Motor Vehicles on or before January 1, 2002, and on or before January 1 annually thereafter, as to the suspension of the collection of a fee by the service authority, provided the service authority has been in existence for at least two full fiscal years and the revenue fee surpluses are in excess of those allowed under this section.

(f) On or before January 1, 2002, and on or before January 1 annually thereafter, the Controller shall prepare and submit to the Legislature a revenue and expenditure summary for each service authority established under Section 22710 that includes, but is not limited to, all of the following:

(1) Total revenues received by each service authority.

(2) Total expenditures by each service authority.

(3) Unexpended revenues for each service authority.

(4) Total number of vehicle abatements for each service authority.

(5) The average cost per abatement for each service authority.

(g) The fee imposed by a service authority shall remain in effect until January 1, 2015.

SEC. 42. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) In addition to the one dollar ($1) fee, upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles shall pay an additional fee of two dollars ($2).

SEC. 43. Section 9250.10 of the Vehicle Code is amended to read:

9250.10. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, any additional fees imposed by a service authority for freeway emergencies pursuant to Section 2555 of the Streets and Highways Code shall be paid to the department at the time of registration or renewal of registration of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, subject to registration under this code in the subject counties, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the additional fees imposed for freeway emergencies, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) After deducting its administrative costs, the department shall distribute the additional fees collected pursuant to subdivision (a) to the authority in the county in which they were collected.

SEC. 44. Section 9250.13 of the Vehicle Code is amended to read:

9250.13. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) fee, upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles shall pay an additional fee of two dollars ($2).

(b) The money realized pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs

of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

SEC. 45. Section 9250.14 of the Vehicle Code is amended to read:

9250.14. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller is continuously appropriated, without regard to fiscal years, for the administrative costs of the Controller, and for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county.

(c) Except as otherwise provided in this subdivision, money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute vehicle theft crimes. In any county with a population of 200,000 or less, the money shall be expended exclusively for those vehicle theft crime programs and for the prosecution of crimes involving driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or any combination of those crimes.

(d) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds, nor for any purpose not authorized under this section.

(e) Any funds received by a county prior to January 1, 2000, pursuant to this section that are not expended to deter, investigate, or prosecute crimes pursuant to subdivision (c) shall be returned to the Controller, for

deposit in the Motor Vehicle Account in the State Transportation Fund. Those funds received by a county after January 1, 2000, shall be expended in accordance with this section.

(f) Each county that has adopted or adopts a resolution pursuant to subdivision (a) shall submit, on or before the 13th day following the end of each quarter, a quarterly expenditure and activity report to the designated statewide Vehicle Theft Investigation and Apprehension Coordinator in the Department of the California Highway Patrol. The coordinator shall compile all county reports and prepare an annual report for dissemination to the Legislature and participating counties.

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

SEC. 45.5. Section 9250.14 of the Vehicle Code is amended to read:

9250.14. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller is continuously appropriated, without regard to fiscal years, for the administrative costs of the Controller, and for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county.

(c) Except as otherwise provided in this subdivision, money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute vehicle theft crimes. In any county with a population of 250,000 or less, the money shall be expended exclusively for those vehicle theft crime programs and for the prosecution of crimes involving driving while under the influence of alcohol or drugs, or both, in violation of Section 23152 or 23153, or

vehicular manslaughter in violation of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or any combination of those crimes.

(d) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds, nor for any purpose not authorized under this section.

(e) Any funds received by a county prior to January 1, 2000, pursuant to this section that are not expended to deter, investigate, or prosecute crimes pursuant to subdivision (c) shall be returned to the Controller, for deposit in the Motor Vehicle Account in the State Transportation Fund. Those funds received by a county after January 1, 2000, shall be expended in accordance with this section.

(f) Each county that has adopted or adopts a resolution pursuant to subdivision (a) shall submit, on or before the 13th day following the end of each quarter, a quarterly expenditure and activity report to the designated statewide Vehicle Theft Investigation and Apprehension Coordinator in the Department of the California Highway Patrol. The coordinator shall compile all county reports and prepare an annual report for dissemination to the Legislature and participating counties.

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

SEC. 46. Section 9250.19 of the Vehicle Code is amended to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle, except trailers and semitrailers described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(3) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and, upon appropriation by the Legislature, for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the Board of Supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

(f) The fee imposed under this section shall remain in effect only for a period of five years from the date that the actual collection of the fee commences, unless a later enacted statute deletes or extends that period.

SEC. 47. Section 9260 of the Vehicle Code is amended to read:

9260. (a) The fee for a temporary registration issued under Section 4004 is one-quarter of the annual fees in Division 3 (commencing with Section 4000) of this code and Part 5 (commencing with Section 10701)

of Division 2 of the Revenue and Taxation Code, for the period that the vehicle is to be operated in this state.

(b) The fee for a trip permit issued under Section 4004 is forty-five dollars ($45) for each commercial motor vehicle.

SEC. 48. Section 9261 of the Vehicle Code is amended to read:

9261. (a) A service fee of seven dollars ($7) shall be paid for an identification plate issued pursuant to Section 5014. Publicly owned special construction equipment, cemetery equipment, special mobile equipment, logging vehicles, and implements of husbandry are exempt from the service charge.

(b) A service fee of seven dollars ($7) shall be paid for an identification plate issued pursuant to Section 5016.5.

(c) Upon application for the transfer of interest of an owner in a piece of equipment, vehicle, or implement of husbandry identified pursuant to Section 5014, the transferee shall pay a fee of seven dollars ($7).

(d) A fee of three dollars ($3) shall be paid upon the renewal of an identification plate issued pursuant to Section 5014 or 5016.5.

SEC. 49. Section 9400 of the Vehicle Code is amended to read:

9400. Except as provided in Section 9400.1, and in addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of any commercial motor vehicle singly, or in combination, that operates with an unladen weight of 10,000 pounds or less. Weight fees for pickup trucks are calculated under this section. Whenever a camper is temporarily attached to a motor vehicle designed to transport property, the motor vehicle shall be subject to the fees imposed by this section. The camper shall be deemed to be a load, and fees imposed by this section upon the motor vehicle shall be based upon the unladen weight of the motor vehicle, exclusive of the camper.

(a) For any electric vehicle designed, used, or maintained as described in this section, fees shall be paid according to the following schedule:

Unladen Weight	Fee
Less than 6,000 lbs.	$ 87
6,000 lbs. or more but less than 10,000 lbs.	266
10,000 lbs. or more	358

(b) For any motor vehicle having not more than two axles and designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid according to the following schedule:

Unladen Weight	Fee
Less than 3,000 lbs.	$ 8
3,000 lbs. to and including 4,000 lbs.	24

4,001 lbs. to and including 5,000 lbs.	80
5,001 lbs. to and including 6,000 lbs.	154
6,001 lbs. to and including 7,000 lbs.	204
7,001 lbs. to and including 8,000 lbs.	257
8,001 lbs. to and including 9,000 lbs.	308
9,001 lbs. to and including 10,000 lbs.	360

(c) For any motor vehicle having three or more axles designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid for registration according to the following schedule:

Unladen Weight	Fee
2,000 lbs. to and including 3,000 lbs.	$ 43
3,001 lbs. to and including 4,000 lbs.	77
4,001 lbs. to and including 5,000 lbs.	154
5,001 lbs. to and including 6,000 lbs.	231
6,001 lbs. to and including 7,000 lbs.	308
7,001 lbs. to and including 8,000 lbs.	385
8,001 lbs. to and including 9,000 lbs.	462
9,001 lbs. to and including 10,000 lbs.	539

(d) This section is not applicable to any vehicle that is operated or moved over the highway exclusively for the purpose of historical exhibition or other similar noncommercial purpose.

(e) The fee changes effected by this section apply to (1) initial or original registration on or after January 1, 1995, and prior to December 31, 2001, of any commercial vehicle never before registered in this state and (2) to renewal of registration of any commercial vehicle whose registration expires on or after January 1, 1995, and prior to December 31, 2001.

(f) Commercial vehicles, other than those specified in Section 9400.1, with an initial registration or renewal of registration that is due on or after December 31, 2001, are subject to the payment of fees specified in this section.

SEC. 49.5. Section 9400 of the Vehicle Code is amended to read:

9400. Except as provided in Section 9400.1, and in addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of any commercial motor vehicle singly, or in combination, that operates with an unladen weight of 10,000 pounds or less. Weight fees for pickup trucks are calculated under this section. Whenever a camper is temporarily attached to a motor vehicle designed to transport property, the motor vehicle shall be subject to the fees imposed by this section. The camper shall be deemed to be a load, and

fees imposed by this section upon the motor vehicle shall be based upon the unladen weight of the motor vehicle, exclusive of the camper.

(a) For any electric vehicle designed, used, or maintained as described in this section, fees shall be paid according to the following schedule:

Unladen Weight	Fee
Less than 6,000 lbs.	$ 87
6,000 lbs. or more but less than 10,000 lbs.	266
10,000 lbs. or more	358

(b) For any motor vehicle having not more than two axles and designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid according to the following schedule:

Unladen Weight	Fee
Less than 3,000 lbs.	$ 8
3,000 lbs. to and including 4,000 lbs.	24
4,001 lbs. to and including 5,000 lbs.	80
5,001 lbs. to and including 6,000 lbs.	154
6,001 lbs. to and including 7,000 lbs.	204
7,001 lbs. to and including 8,000 lbs.	257
8,001 lbs. to and including 9,000 lbs.	308
9,001 lbs. to and including 10,000 lbs.	360

(c) For any motor vehicle having three or more axles designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid for registration according to the following schedule:

Unladen Weight	Fee
2,000 lbs. to and including 3,000 lbs.	$ 43
3,001 lbs. to and including 4,000 lbs.	77
4,001 lbs. to and including 5,000 lbs.	154
5,001 lbs. to and including 6,000 lbs.	231
6,001 lbs. to and including 7,000 lbs.	308
7,001 lbs. to and including 8,000 lbs.	385
8,001 lbs. to and including 9,000 lbs.	462
9,001 lbs. to and including 10,000 lbs.	539

(d) This section is not applicable to any vehicle that is operated or moved over the highway exclusively for the purpose of historical exhibition or other similar noncommercial purpose.

(e) (1) Except as provided in paragraph (2), in addition to the fees set forth in subdivisions (b) and (c), a Cargo Theft Interdiction Program Fee of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under Section 9400.1.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, pickup trucks, utility trailers, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall be transferred to the Motor Carriers Safety Improvement Fund.

(f) The fee changes effected by this section apply to (1) initial or original registration on or after January 1, 1995, and prior to December 31, 2001, of any commercial vehicle never before registered in this state and (2) to renewal of registration of any commercial vehicle whose registration expires on or after January 1, 1995, and prior to December 31, 2001.

(g) Commercial vehicles, other than those specified in Section 9400.1, with an initial registration or renewal of registration that is due on or after December 31, 2001, are subject to the payment of fees specified in this section.

SEC. 50. Section 9400.1 is added to the Vehicle Code, to read:

9400.1. In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck weight fees are not calculated under this section.

Gross Vehicle Weight Range	Fee
10,001–15,000	$ 257
15,001–20,000	353
20,001–26,000	435
26,001–30,000	552
30,001–35,000	648
35,001–40,000	761
40,001–45,000	837
45,001–50,000	948
50,001–54,999	1,039
55,000–60,000	1,173
60,001–65,000	1,282
65,001–70,000	1,398

70,001–75,000	1,650
75,001–80,000	1,700

The fee changes effected by this section apply to (1) initial or original registration on and after December 31, 2001, of any commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) to renewal of registration of any commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001.

SEC. 51. Section 9406 of the Vehicle Code is amended to read:

9406. Alterations or additions to registered vehicles for which fees have been paid under Section 9400 or 9400.1 placing the vehicles in weight fee classifications under Section 9400 or 9400.1 greater than the weight fees previously paid shall be reported to the department and at the same time the difference between the weight fee previously paid, reduced as provided in Section 9407, and the greater weight fee, reduced as provided in Section 9407, shall be paid to the department upon the operation of the vehicles in the greater weight fee classification under Section 9400 or 9400.1.

SEC. 52. Section 9406.1 is added to the Vehicle Code, to read:

9406.1. Prior to operation of a vehicle at a declared gross vehicle weight greater than reported to, and registered by, the department, the owner shall make application to the department and pay all appropriate fees.

SEC. 53. Section 9408 of the Vehicle Code is amended to read:

9408. (a) Whenever any registered commercial vehicle, including, but not limited to, any commercial vehicle operating in California with apportioned registration, for which fees have been paid under Section 9400 or 9400.1 is withdrawn from service in this state before the expiration of the registration, the owner may surrender the registration card and license plates previously issued for the vehicle to the department and, within 90 days of the time of withdrawal, make application for the registration of another commercial vehicle which is subject to the fees specified in Section 9400 or 94001. If the vehicle that is withdrawn from service is operating in this state under Article 4 (commencing with Section 8050 of Chapter 4, credit for any unused fees paid under Section 9400 or 9400.1 may be applied only to a commercial vehicle concurrently added to the same apportioned fleet.

(b) Under the circumstances described in subdivision (a), and upon a proper showing of the facts, the department upon determining the fees payable under this division shall allow as credit thereon the unexpired portion, as of the month of the application, of the fee paid under Section 9400 or 9400.1 for the previous registration, but, in addition to fees

otherwise payable under this division less any credit, shall charge and collect an additional fee of two dollars ($2) for issuance of the new registration.

SEC. 54. Section 9554.2 is added to the Vehicle Code, to read:

9554.2. Upon the operation of a commercial motor vehicle at a greater gross vehicle weight than had been reported to and registered by the department, a new registration application shall be made to the department. The greater declared gross vehicle weight fee as required in Section 9400.1 and any penalties defined in this code shall be paid to the department.

SEC. 55. Section 27910 is added to the Vehicle Code, to read:

27910. The Department of the California Highway Patrol shall initiate a 12-month study to determine an effective means to enforce the provisions of the Commercial Vehicle Registration Act of 2001. The Department of the California Highway Patrol, after consultation with representatives from the Department of Transportation, the Board of Equalization, the Department of Motor Vehicles, and the commercial vehicle industry, shall provide, on or before July 1, 2003, recommendations to the Legislature for actions to be taken to ensure compliance with that act.

SEC. 56. Section 36010 of the Vehicle Code is amended to read:

36010. A ''farm trailer'' is either of the following:

(a) A trailer or semitrailer owned and operated by a farmer in the conduct of agricultural operations, and used exclusively to transport agricultural products upon the highway to the point of first handling and return.

(b) A trailer or semitrailer equipped with rollers on the bed, with a frame not taller than 10 inches high, and with a gross vehicle weight rating of 10,000 pounds or less, that is owned, rented, or leased by a farmer and operated by that farmer in the conduct of agricultural operations, used exclusively to transport fruit and vegetables upon the highway to the point of first handling and return, and that was manufactured and in use prior to January 1, 1997. These vehicles may also be operated on the highways without a load for the purposes of delivering a rented or leased vehicle to the renting or leasing farmer's farm, or returning empty to the owner's premises.

SEC. 57. Section 36109 of the Vehicle Code is amended to read:

36109. ''Farm trailers,'' as defined in Section 36010, having a gross weight of 10,000 pounds or less, are exempt from registration except that Section 5014 shall apply to such trailers.

SEC. 58. Section 42030.1 is added to the Vehicle Code, to read:

42030.1. (a) Every person convicted of a violation of any declared gross vehicle weight limitation provision of this code, shall be punished by a fine that equals the amounts specified in the following table:

Pounds in Excess of the Declared Gross Vehicle Weight	Fine
1,001–1,500	$ 250
1,501–2,000	300
2,001–2,500	350
2,501–3,000	400
3,001–3,500	450
3,501–4,000	500
4,001–4,500	550
4,501–5,000	600
5,001–6,000	700
6,001–7,000	800
7,001–8,000	900
8,001–10,000	1,000
10,001 and over	2,000

(b) No part of the penalties prescribed by this section shall be suspended for a conviction of any of the following:

(1) Section 40001 for requiring operation of a vehicle upon a highway in violation of any provision referred to in this section.

(2) Any provision referred to in this section when a second or subsequent conviction of a violation thereof occurs within three years immediately preceding the violation charged.

SEC. 59. On or before January 1, 2003, and annually thereafter, the Department of Motor Vehicles, in consultation with the Department of the California Highway Patrol, the Department of Transportation, the Board of Equalization, and the commercial vehicle industry, shall review and report to the Legislature its findings and, if applicable, make any recommendation as to the necessary adjustments in the fee schedule, to ensure that revenue neutrality is obtained and maintained for all affected entities and funds, and to ensure that the revised fee schedule affects the commercial vehicle industry in as equitable a manner as possible.

SEC. 60. Section 28.5 of this bill incorporates amendments to Section 5101 of the Vehicle Code proposed by both this bill and AB 1515. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 5101 of the Vehicle Code, and (3) this bill is enacted after AB 1515, in which case Section 5101 of the Vehicle Code, as amended by Section 28 of this bill, shall remain operative only until the operative date of AB 1515, at which time Section 28.5 of this bill shall become operative.

SEC. 61. Section 29.5 of this bill incorporates amendments to Section 5103 of the Vehicle Code proposed by both this bill and AB 1515. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 5103 of the Vehicle Code, and (3) this bill is enacted after AB 1515, in which case Section 5103 of the Vehicle Code, as amended by Section 29 of this bill, shall remain operative only until the operative date of AB 1515, at which time Section 29.5 of this bill shall become operative.

SEC. 62. Section 41.5 of this bill incorporates amendments to Section 9250.7 of the Vehicle Code proposed by both this bill and SB 1333. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 9250.7 of the Vehicle Code, and (3) this bill is enacted after SB 1333, in which case Section 9250.7 of the Vehicle Code, as amended by Section 41 of this bill, shall remain operative only until the operative date of SB 1333, at which time Section 41.5 of this bill shall become operative.

SEC. 63. Section 45.5 of this bill incorporates amendments to Section 9250.14 of the Vehicle Code proposed by both this bill and AB 2227. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 9250.14 of the Vehicle Code, and (3) this bill is enacted after AB 2227, in which case Section 9250.14 of the Vehicle Code, as amended by Section 45 of this bill, shall remain operative only until the operative date of AB 2227, at which time Section 45.5 of this bill shall become operative.

SEC. 64. Section 49.5 of this bill incorporates amendments to Section 9400 of the Vehicle Code proposed by both this bill and AB 2749. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 9400 of the Vehicle Code, and (3) this bill is enacted after AB 2749, in which case Section 9400 of the Vehicle Code, as amended by Section 49 of this bill, shall remain operative only until the operative date of AB 2749, at which time Section 49.5 of this bill shall become operative.

SEC. 65. 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. 66. The sum of three million five hundred twenty thousand eight hundred nine dollars ($3,520,809) is hereby appropriated to the Department of Motor Vehicles from the Motor Vehicle Account in the State Transportation Fund for purposes of implementing this act.

SEC. 67. This act shall become operative for vehicle registrations that expire on or after December 31, 2001.

SEC. 68. 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:

If California does not enact this act during this legislative session, California stands to lose as much as $126 million in truck and trailer revenues. Of equal concern is the fact that if California is no longer a member of the IRP, many trucking fleet operators may be encouraged to relocate their operations outside of this state, meaning the loss of valuable jobs. In order to protect California's interests, it is vital that this act go into immediate effect.

CHAPTER 862

An act to amend Sections 17276, 17279.5, 18405, 18415, 18505, 18601, 18633.5, 18668, 19011, 19025, 19026, 19027, 19081, 19082, 19104, 19134, 19135, 19136, 19136.3, 19136.6, 19141.2, 19141.6, 19142, 19144, 19145, 19147, 19148, 19150, 19164, 19191, 19192, 19193, 19194, 19363, 19364, 19365, 19503, 19565, 21026, 23036, 23041, 23042, 23051.5, 23058, 23104, 23114, 23151, 23151.1, 23151.2, 23153, 23181, 23183, 23183.1, 23183.2, 23186, 23253, 23281, 23282, 23301, 23304.1, 23305.1, 23361, 23362, 23455, 23456, 23457, 23604, 23608, 23608.2, 23608.3, 23609, 23610, 23610.5, 23612.2, 23617, 23617.5, 23621, 23622.7, 23622.8, 23624, 23633, 23634, 23636, 23637, 23642, 23645, 23646, 23649, 23657, 23666, 23701a, 23701n, 23701s, 23703, 23704, 23731, 23735, 23736.3, 23736.4, 23737, 23771, 23772, 23774, 23775, 23777, 23800, 23801, 23802.5, 23803, 23804.5, 23806, 23811, 24273, 24273.5, 24275, 24276, 24306, 24307, 24308, 24322, 24324, 24343.3, 24343.5, 24343.7, 24344, 24344.5, 24344.7, 24345, 24346, 24347, 24347.5, 24348, 24349, 24351, 24354.1, 24355.5, 24356, 24356.5, 24356.6, 24356.7, 24356.8, 24357, 24357.2, 24357.7, 24357.9, 24358, 24360, 24361, 24362, 24363, 24364, 24377, 24383, 24402, 24404, 24409, 24410, 24415, 24416, 24416.2, 24416.4, 24416.5, 24416.6, 24424, 24425, 24434, 24436.1, 24436.5, 24438, 24442.5, 24448, 24602, 24611, 24631, 24632, 24633, 24633.5, 24634, 24636, 24637, 24654,

24667, 24673.2, 24674, 24675, 24676, 24676.5, 24677, 24678, 24685, 24690, 24692, 24710, 24871, 24871.5, 24872.4, 24872.5, 24872.7, 24905.5, 24916, 24918, 24943, 24944, 24945, 24946, 24949.1, 24952, 24954, 24955, 24956, 24990.4, 24990.7, 24994, 25101.3, 25105, 25108, 25110, 25111, 25111.1, 25112, 25124, 25129, 25131, 25132, 25134, and 25141 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, and 17276.6, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(2) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (d).

(ii) With respect to the portion of the net operating loss which exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five taxable years following the taxable year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term ''net loss'' means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) Except as provided in paragraphs (2) and (3), for each taxable year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of

the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute ''five taxable years'' in lieu of ''20 taxable years.''

(2) In the case of a ''new business,'' the ''five taxable years'' in paragraph (1) shall be modified to read as follows:

(A) ''Eight taxable years'' for a net operating loss attributable to the first taxable year of that new business.

(B) ''Seven taxable years'' for a net operating loss attributable to the second taxable year of that new business.

(C) ''Six taxable years'' for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the taxable year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) ''Eligible small business'' means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), ''new business'' means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) ''Title 11 or similar case'' shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the

meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) ''Biopharmaceutical activities'' means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) ''Other biotechnology activities'' means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section, a deduction shall be allowed to a ''qualified taxpayer'' as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, and 17276.6.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997.

SEC. 2. Section 17279.5 of the Revenue and Taxation Code is amended to read:

17279.5. Section 264 of the Internal Revenue Code, relating to certain amounts paid in connection with insurance contracts, is modified to read as follows:

(a) No deduction shall be allowed for—

(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

(2) Any amount paid or accrued on indebtedness incurred to purchase or carry a single premium life insurance, endowment, or annuity contract. This paragraph shall apply with respect to annuity contracts only as to contracts purchased after December 31, 1954.

(3) Except as provided in subdivision (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of that contract (either from the insurer or otherwise). This paragraph shall apply only with respect to contracts purchased after August 6, 1963.

(4) Except as provided in subdivision (d), any interest paid or accrued on any indebtedness with respect to one or more insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

This paragraph shall apply with respect to contracts purchased after June 20, 1986.

(b) Paragraph (1) of subdivision (a) shall not apply to either of the following:

(1) Any annuity contract described in Section 72(s)(5) of the Internal Revenue Code.

(2) Any annuity contract to which Section 72(u) of the Internal Revenue Code applies.

(c) For purposes of paragraph (2) of subdivision (a), a contract shall be treated as a single premium contract if either of the following conditions exist:

(1) Substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased.

(2) An amount is deposited after December 31, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Paragraph (3) of subdivision (a) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in paragraph (3) of subdivision (a) if any of the following are applicable:

(1) No part of four of the annual premiums due during the seven-year period (beginning with the date the first premium on the contract to which that plan relates was paid) is paid under that plan by means of indebtedness.

(2) The total of the amounts paid or accrued by the person during that taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of paragraph (3) of subdivision (a) does not exceed one hundred dollars ($100).

(3) That amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in its financial obligations.

(4) That indebtedness was incurred in connection with its trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new seven-year period described in that paragraph with respect to that contract shall commence on the date the first that increased premium is paid.

(e) (1) Paragraph (4) of subdivision (a) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of that indebtedness with respect to policies and contracts covering that individual does not exceed fifty thousand dollars ($50,000).

(2) (A) No deduction shall be allowed by reason of paragraph (1) or the last sentence of subdivision (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of that interest exceeds the amount which would have been determined if the applicable rate of interest were used for that month.

(B) For purposes of subparagraph (A):

(i) The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month.

(ii) In the case of indebtedness on a contract purchased on or before June 20, 1986, all of the following shall apply:

(I) If the contract provides a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased.

(II) If the contract provides a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be the

Moody's rate described in clause (i) for the third month preceding the first month in that period.

(III) For purposes of subclause (II), the term ''applicable period'' means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than that 12-month period to be its applicable period. That election shall be made not later than the 90th day after the date of the enactment of the act adding this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after December 31, 1995, and all subsequent taxable years unless revoked with the consent of the Franchise Tax Board.

(3) For purposes of paragraph (1), ''key person'' means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of:

(A) Five individuals.

(B) The lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) For purposes of this subdivision, ''20-percent owner'' means both of the following:

(A) If the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation.

(B) If the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) (A) For purposes of subparagraph (A) of paragraph (4) and for purposes of applying the fifty thousand dollar ($50,000) limitation in paragraph (1) both of the following shall apply:

(i) All members of a controlled group shall be treated as one taxpayer.

(ii) The limitation shall be allocated among the members of the controlled group in the manner the Franchise Tax Board may prescribe.

(B) For purposes of this paragraph, all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as members of a controlled group.

(f) (1) No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to the interest expense as:

(A) The taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) The sum of:

(i) In the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of those policies and contracts, and

(ii) In the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of Section 1016 of the Internal Revenue Code) of those assets.

(3) For purposes of this subdivision, the term ''unborrowed policy cash value'' means, with respect to any life insurance policy or annuity or endowment contract, the excess of:

(A) The cash surrender value of the policy or contract determined without regard to any surrender charge, over

(B) The amount of any loan with respect to that policy or contract.

(4) (A) Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if the policy or contract covers only one individual and if that individual is (at the time first covered by the policy or contract):

(i) A 20-percent owner of the entity, or

(ii) An individual (not described in clause (i)) who is an officer, director, or employee of that trade or business.

A policy or contract covering a 20-percent owner of the entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of the owner and the owner's spouse.

(B) Paragraph (1) shall not apply to any annuity contract to which Section 72(u) of the Internal Revenue Code applies.

(C) Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) For purposes of subparagraph (A), the term ''20-percent owner'' has the meaning given that term by paragraph (4) of subdivision (e).

(5) (A) (i) This subdivision shall not apply to any policy or contract held by a natural person.

(ii) If a trade or business is directly or indirectly the beneficiary under any policy or contract, the policy or contract shall be treated as held by that trade or business and not by a natural person.

(iii) (I) Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not

exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) A copy of the report required for federal purposes under Section 264(f) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the time and in the manner specified for federal purposes and shall be treated as a statement referred to in Section 6724(d)(1) of the Internal Revenue Code.

(B) In the case of a partnership or S corporation, this subdivision shall be applied at the partnership and corporate levels.

(6) (A) If interest on any indebtedness is disallowed under subdivision (a) or Section 17280, both of the following shall apply:

(i) The disallowed interest shall not be taken into account for purposes of applying this subdivision.

(ii) The amount otherwise taken into account under subparagraph (B) of paragraph (2) shall be reduced (but not below zero) by the amount of the indebtedness.

(B) This subdivision shall be applied before the application of Section 263A of the Internal Revenue Code, relating to capitalization of certain expenses where taxpayer produces property.

(7) The term ''interest expense'' means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of Section 265(b)(4) of the Internal Revenue Code) for the taxable year (determined without regard to this subdivision, Section 265(b) of the Internal Revenue Code, and Section 291 of the Internal Revenue Code).

(8) All members of a controlled group (within the meaning of subparagraph (B) of paragraph (5) of subdivision (e)) shall be treated as one taxpayer for purposes of this subdivision.

(g) (1) The amendments made to this section by the act adding this subdivision shall apply to interest paid or accrued after December 31, 1995.

(2) (A) The amendments made to this section by the act adding this subdivision shall not apply to qualified interest paid or accrued on that indebtedness after December 31, 1995, and before January 1, 1999, in the case of either of the following:

(i) Indebtedness incurred before January 1, 1996.

(ii) Indebtedness incurred before January 1, 1997, with respect to any contract or policy entered into in 1994 or 1995.

(B) For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for that month on that indebtedness if—

(i) In the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

(ii) The lesser of the following rates of interest were used for that month:

(I) The rate of interest specified under the terms of the indebtedness as in effect on December 31, 1995 (and without regard to modification of the terms after that date).

(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month. For purposes of clause (i), all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as one person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

(C) For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent

(3) This subdivision shall not apply to any contract purchased on or before June 20, 1986, except that paragraph (2) of subdivision (d) shall apply to interest paid or accrued after December 31, 1995.

(h) (1) Any amount received under any life insurance policy or endowment or annuity contract described in paragraph (4) of subdivision (a) shall be includable in gross income (in lieu of any other inclusion in gross income) ratably over the four taxable year period beginning with the taxable year that amount would (but for this paragraph) be includable, upon the occurrence of either of the following:

(A) The complete surrender, redemption, or maturity of that policy or contract during the calendar year 1996, 1997, or 1998.

(B) The full discharge during calendar year 1996, 1997, or 1998, of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract.

(2) Paragraph (1) shall only apply to the extent the amount is includable in gross income for the taxable year in which the event described in subparagraph (A) or (B) of paragraph (1) occurs.

(3) Solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) or solely by reason of no additional premiums being received under the contract by reason of a lapse occurring after December 31, 1995, a contract shall not be treated as either of the following:

(A) Failing to meet the requirement of paragraph (1) of subdivision (c).

(B) A single premium contract under paragraph (1) of subdivision (b).

(i) The amendments made by the act adding this subdivision shall apply to contracts issued after June 8, 1997, in taxable years beginning on or after January 1, 1998. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract, except that the addition of covered lives shall be treated as a new contract only with respect to those additional covered lives. For purposes of this subdivision, an increase in the death benefit under a policy or contract issued in connection with a lapse described in Section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 shall not be treated as a new contract.

SEC. 3. Section 18405 of the Revenue and Taxation Code is amended to read:

18405. (a) In the case of a new statutory provision in Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or the addition of a new part, the Franchise Tax Board itself is authorized to grant relief as set forth in subdivision (b) from the requirements of the new statutory provision in a manner as provided in subdivision (c).

(b) The relief provided in subdivision (a) may be granted only for the first taxable year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. The relief is limited to waiving penalties or perfecting elections and may be granted only to taxpayers who timely paid taxes and other required amounts shown on the return consistent with the election and who timely filed their return (with regard to extension).

(c) The relief granted in this section shall, upon the recommendation of the executive officer of the Franchise Tax Board, be made by resolution of the Franchise Tax Board which sets forth the conditions, time, and manner as the Franchise Tax Board determines are necessary. The resolution shall be adopted only by an affirmative vote of each of the three members of the Franchise Tax Board.

(d) For purposes of this section:

(1) ''New statutory provision'' means a complete, newly established tax program, tax credit, exemption, deduction, exclusion, penalty, or reporting or payment requirement and does not mean amendments made to existing tax provisions that make minor modifications or technical changes.

(2) ''Perfecting elections'' includes correcting omissions or errors only when substantial evidence is present with the filed return that the taxpayer intended to make the election and does not include making an election where one was not previously attempted to be made.

(3) ''Substantial unintentional noncompliance,'' for purposes of Part 11 (commencing with Section 23001), includes any case in which the taxpayer filed a water's-edge contract with a timely filed original return and timely paid all taxes and other required amounts shown on the return consistent with the water's-edge election, but where the taxpayer's election is or might be invalidated by reason of the act or omission of an affiliated corporation that is not the parent or a subsidiary of the taxpayer. In that case, notwithstanding anything to the contrary in this section, relief shall be deemed granted to validate the taxpayer's water's-edge election, conditioned only upon an agreement by the affiliated corporation to either (A) file a water's-edge contract and pay all taxes and other required amounts consistent with that election, or (B) waive any right, with respect to any taxable year for which the corporation did not make a water's-edge election on its own timely filed return, to determine its income derived from or attributable to sources within this state pursuant to that election, whichever measure produces the greater amount of tax.

(e) This section shall apply to any Franchise Tax Board resolution adopted after the effective date of this section with respect to any taxable year which is subject to an open statute of limitations on the date of the resolution.

(f) On or before March 1, 1995, the Franchise Tax Board shall report to the Legislature on the utilization of this section. The report shall describe the class or classes of taxpayers provided relief, the issue involved and the number of taxpayers affected, and, where applicable, the aggregate amount of penalty relieved for each class of taxpayers.

SEC. 4. Section 18415 of the Revenue and Taxation Code is amended to read:

18415. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of taxes, additions to tax other than Sections 19136 or 19142, penalties, or the allowance of credits against the tax, shall be applied to taxable years beginning on or after January 1 of the year in which the act takes effect.

(b) That change the provisions of Sections 19023 to 19027, inclusive, (relating to payment of estimated tax) or Section 19136 or Sections 19142 to 19151, inclusive, (relating to underpayment of estimated tax) shall be applied to taxable years beginning on or after January 1 of the year immediately after the year in which the act takes effect.

(c) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

SEC. 5. Section 18505 of the Revenue and Taxation Code is amended to read:

18505. (a) Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) taxable under Part 10 (commencing with Section 17001) shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, for any of the following taxpayers for whom he or she acts, stating specifically the items of gross income of the taxpayer and the deductions and credits allowed:

(1) Every individual having an adjusted gross income for the taxable year in excess of six thousand dollars ($6,000), if single.

(2) Every individual having an adjusted gross income for the taxable year in excess of twelve thousand dollars ($12,000), if married.

(3) Every individual having a gross income for the taxable year in excess of eight thousand dollars ($8,000), regardless of the amount of adjusted gross income.

(4) Every estate the net income of which for the taxable year is in excess of one thousand dollars ($1,000).

(5) Every trust (not treated as a corporation under Section 23038) the net income of which for the taxable year is in excess of one hundred dollars ($100).

(6) Every estate or trust (not treated as a corporation under Section 23038) the gross income of which for the taxable year is in excess of eight thousand dollars ($8,000), regardless of the amount of the net income.

(7) Every decedent, for the year in which death occurred, and for prior years, if returns for those years should have been filed but have not been filed by the decedent, under the rules and regulations that the Franchise Tax Board may prescribe.

(b) The fiduciary of any estate or trust required to file a return under subdivision (a), for any taxable year shall, on or before the date on which that return was required to be filed, furnish to each beneficiary (or nominee thereof) a statement in accordance with the provisions of Section 6034A of the Internal Revenue Code.

(c) For taxable years beginning on or after January 1, 1998:

(1) A beneficiary of any estate or trust to which subdivision (b) applies shall, on that beneficiary's return, treat any reported item in a manner which is consistent with the treatment of that item on the applicable entity's return.

(2) (A) In the case of any reported item, paragraph (1) shall not apply to that item if:

(i) (I) The applicable entity has filed a return but the beneficiary's treatment on that beneficiary's return is (or may be) inconsistent with the treatment of the item on the applicable entity's return, or

(II) The applicable entity has not filed a return, and

(ii) The beneficiary files with the Franchise Tax Board a statement identifying the inconsistency.

(B) A beneficiary shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a reported item if the beneficiary does both of the following:

(i) Demonstrates to the satisfaction of the Franchise Tax Board that the treatment of the reported item on the beneficiary's return is consistent with the treatment of the item on the statement furnished under subdivision (b) to the beneficiary (or nominee thereof) by the applicable entity.

(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), in which the beneficiary does not comply with clause (ii) of subparagraph (A) of paragraph (2), any adjustment required to make the treatment of the items by the beneficiary consistent with the treatment of the items on the applicable entity's return shall be treated as arising out of mathematical or clerical errors and assessed and collected under Section 19051.

(4) For purposes of this subdivision:

(A) The term ''reported item'' means any item for which information is required to be furnished under subdivision (b).

(B) The term ''applicable entity'' means the estate or trust of which the taxpayer is the beneficiary.

(5) The penalties imposed under Article 7 (commencing with Section 19131) of Chapter 4 shall apply in the case of a beneficiary's negligence in connection with, or disregard of, the requirements of this subdivision.

(d) The amendments made by the act adding this subdivision shall apply to returns of beneficiaries and owners filed on or after January 1, 1998.

SEC. 6. 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 taxable year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the taxable 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 taxable 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 taxable 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 taxable 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 taxable years beginning on or after January 1, 1997, each ''S corporation'' required to file a return under subdivision (a) for any taxable year shall, on or before the day on which the return for the taxable year was filed, furnish each person who is a shareholder at any time during the taxable year a copy of the information shown on the return.

(e) For taxable 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. 7. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941 or 23091, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable year shall, on or before the day on which the return for that taxable year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability

company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941) or Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner or on or before the fifteenth day of the third month after the close of the taxable year of the owner subject to tax under Chapter 2 (commencing with Section 23101) of Part 11, whichever is applicable.

(4) For limited liability companies disregarded pursuant to Section 23038, ''taxable year of the owner'' shall be substituted for ''taxable year'' in Sections 17941 and 17942.

SEC. 8. Section 18668 of the Revenue and Taxation Code is amended to read:

18668. (a) Every person required under this article to deduct and withhold any tax is hereby made liable for that tax, to the extent provided by this section and, insofar as they are not inconsistent with this article,

all the provisions of this part relating to penalties, interest, assessment, and collections shall apply to persons subject to this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under this article shall be considered the tax of the person. Any person who fails to withhold from any payments any amount required to be withheld under this article is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause.

(b) If any amount required to be withheld under this article is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19521, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) In lieu of the amount provided for in subdivision (a), unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (e) of Section 18662, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (e) of Section 18662:

(1) Five hundred dollars ($500).

(2) Ten percent of the amount required to be withheld under subdivision (e) of Section 18662.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person shall be liable for the amount specified in subdivision (d), when written notification of the withholding requirements of subdivision (e) of Section 18662 is not provided to the transferee and the California real property disposition is subject to withholding under subdivision (e) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee in substantially the same form as follows:

"In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to $3^1/_3$ percent of the sales price in the case of a disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR

3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).''

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

(3) The real estate escrow person shall not be liable under this subdivision, if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor's return for the taxable year in which the disposition occurred.

(4) The real estate escrow person and the transferee shall not be liable under paragraph (1) or subdivision (d), if the failure to withhold is the result of the real estate escrow person's reliance, based on good faith and on all the information of which he or she has knowledge, upon a written certificate executed by the transferor under penalty of perjury certifying to any of the following:

(A) That the transferor is a resident of California.

(B) That the California real property being conveyed is the principal residence of the transferor within the meaning of Section 1034 of the Internal Revenue Code.

(C) The transferor, if a corporation, has a permanent place of business in California.

(5) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) of Section 18662 knowingly executes a false certificate pursuant to this subdivision shall be liable for twice the amount specified in subdivision (d).

(6) Unless the failure to notify is due to willful disregard of the withholding requirements of subdivision (e) of Section 18662, the real estate escrow person shall not be liable under this subdivision if the disposition of California real property occurs prior to July 1, 1991.

(f) The amount of tax required to be deducted and withheld under this article 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) or Part 11 (commencing with Section 23001).

SEC. 9. Section 19011 of the Revenue and Taxation Code is amended to read:

19011. (a) All payments required under this part, regardless of the taxable year to which the payments apply shall be remitted to the Franchise Tax Board by electronic funds transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code, once any of the following conditions are met:

(1) With respect to any corporation, any installment payment of estimated tax made pursuant to Section 19025 or the payment made pursuant to Section 18604 with regard to an extension of time to file exceeds fifty thousand dollars ($50,000) in any taxable year beginning on or after January 1, 1991, or exceeds twenty thousand dollars ($20,000) in any taxable year beginning on or after January 1, 1995.

(2) With respect to any corporation, the total tax liability exceeds two hundred thousand dollars ($200,000) in any taxable year beginning on or after January 1, 1991, or exceeds eighty thousand dollars ($80,000) in any taxable year beginning on or after January 1, 1995. For purposes of this section, total tax liability shall be the total tax liability as shown on the original return, after any adjustment made pursuant to Section 19051.

(3) A taxpayer submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(b) A taxpayer required to remit payments to the Franchise Tax Board by electronic funds transfer may elect to discontinue making payments where the threshold requirements set forth in paragraphs (1) and (2) of subdivision (a) were not met for the preceding taxable year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(c) Any taxpayer required to remit payment by electronic funds transfer pursuant to this section who makes payment by other means shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make payment as required was for reasonable cause and was not the result of willful neglect.

(d) Any taxpayer required to remit payments by electronic funds transfer pursuant to this section may request a waiver of those

requirements from the Franchise Tax Board. The Franchise Tax Board may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in this section were not representative of the taxpayer's tax liability. If a taxpayer is granted a waiver, subsequent remittances by electronic funds transfer shall be required only on those terms set forth in the waiver.

(e) The Franchise Tax Board shall accept remittances by electronic funds transfer pursuant to this section no later than January 1, 1993. Electronic funds transfer procedures, in addition to those described in subdivision (f), shall be as prescribed by the Franchise Tax Board. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(f) For purposes of this section:

(1) ''Electronic funds transfer'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer.

(2) ''Automated clearinghouse'' means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) ''Automated clearinghouse debit'' means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(4) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(5) ''Fedwire'' means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds

through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the Franchise Tax Board and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (3) or (4). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(6) ''International funds transfer'' means any transaction originated by the taxpayer and utilizing the international electronic payment system to transfer funds, pursuant to which the taxpayer debits its own bank account and credits the state's bank account.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), the income of all taxpayers whose income derived from, or attributable to, sources within this state is required to be determined by a combined report shall be aggregated and the total aggregate amount shall be considered to be the income of a single taxpayer for purposes of determining the payment or total tax liability of a single taxpayer.

SEC. 10. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year	25 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	25	25	25
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year	—	$33^1/_3$	$33^1/_3$	$33^1/_3$
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year	—	—	50	50
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year	—	—	—	100

(c) If a wholly owned subsidiary is first subject to tax under Section 23800.5 after the last day of the third month of the taxable year of owner,

the amount of the next installment of estimated tax under subdivision (b) after the wholly owned subsidiary is subject to tax under Section 23800.5 shall not be less than the amount of the tax of the wholly owned subsidiary under Section 23800.5 and an amount equal to that amount shall be due and payable on the date the installment is required to be paid. For purposes of determining which installment is the next installment of estimated tax under subdivision (b), subdivision (b) shall be modified by substituting ''includes the tax of a wholly owned subsidiary under Section 23800.5'' for ''exceeds the minimum tax specified by Section 23153.''

SEC. 11. Section 19026 of the Revenue and Taxation Code is amended to read:

19026. If, after paying any installment of estimated tax required by subdivision (b) of Section 19025, the taxpayer makes a new estimate, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be) by the amount computed by dividing—

(a) The difference between—

(1) The amount of estimated tax required to be paid before the date on which the new estimate is made, and

(2) The amount of estimated tax which would have been required to be paid before that date if the new estimate had been made when the first estimate was made, by

(b) The number of installments remaining to be paid on or after the date on which the new estimate is made.

SEC. 12. Section 19027 of the Revenue and Taxation Code is amended to read:

19027. The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board.

SEC. 13. Section 19081 of the Revenue and Taxation Code is amended to read:

19081. If the Franchise Tax Board finds that the assessment or the collection of a tax or a deficiency for any year, current or past, will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, or its transferee or transferees, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including interest and penalties and additions thereto. Any assessment issued under this article shall also be an assessment issued pursuant to Section 19033, if an assessment has not already been issued pursuant to Section 19033 with respect to that taxable year for that amount.

SEC. 14. Section 19082 of the Revenue and Taxation Code is amended to read:

19082. In the case of a tax for a current period, if the Franchise Tax Board finds that the assessment or collection of the tax will be jeopardized in whole or in part by delay, the Franchise Tax Board may declare the taxable period of the taxpayer immediately terminated. The Franchise Tax Board shall mail or issue notice of its finding and declaration to the taxpayer, together with a demand for a return and immediate payment of the tax based on the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period, and the tax shall be immediately due and payable whether or not the time otherwise allowed by law for filing the return and paying the tax has expired.

SEC. 15. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) Interest upon the amount assessed as a deficiency shall be assessed, collected, and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19521 from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on that portion only to the date paid.

(b) If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.

(c) (1) In the case of any assessment of interest, the Franchise Tax Board may abate the assessment of all or any part of that interest for any period in any of the following circumstances:

(A) Any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise

Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(B) Any payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to that officer or employee being dilatory in performing a ministerial or managerial act.

(C) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(D) For purposes of this paragraph:

(i) Except as provided in subparagraph (C), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(ii) Within 180 days after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization. The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(iii) Except for the amendment adding clause (ii), the amendments made by the act adding this clause are operative with respect to taxable years beginning on or after January 1, 1998. The amendment adding clause (ii) is operative for requests for abatement made on or after January 1, 1998.

(2) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(A) The taxpayer (or a related party) has in any way caused that erroneous refund.

(B) That erroneous refund exceeds fifty thousand dollars ($50,000).

SEC. 16. Section 19134 of the Revenue and Taxation Code is amended to read:

19134. (a) The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply except as otherwise provided.

(b) Section 6657 of the Internal Revenue Code, relating to bad checks, is modified to apply to payments made by credit card remittance or electronic funds transfer (as provided by Section 19011) in addition to payments made by check or money order.

(c) For payments received prior to January 1, 1993, this section shall be applied only to payments pertaining to taxable years beginning on or after January 1, 1990.

(d) For payments received on or after January 1, 1993, this section shall be applied to all payments, without regard to taxable year.

SEC. 17. Section 19135 of the Revenue and Taxation Code is amended to read:

19135. Whenever any foreign corporation which fails to qualify to do business in this state or whose powers, rights, and privileges have been forfeited, or any domestic corporation which has been suspended, and which is doing business in this state, within the meaning of Section 23101, fails to make and file a return as required by this part, the Franchise Tax Board shall impose a penalty of two thousand dollars ($2,000) per taxable year, unless the failure to file is due to reasonable cause and not willful neglect. The penalty shall be in addition to any other penalty which may be due under this part. The penalty shall be imposed if the return is not filed within 60 days after the Franchise Tax Board sends the taxpayer a notice and demand to file the required tax return.

SEC. 18. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) For purposes of Section 6654(d) of the Internal Revenue Code, relating to the amount of required installments, any reference to ''90 percent'' is modified to read ''80 percent.''

(2) Section 6654(d)(2)(C)(ii) of the Internal Revenue Code, relating to applicable percentages, is modified as follows:

In the case of the following required installments:	The applicable percentage is:
1st	20
2nd	40
3rd	60
4th	80

(3) The annualized income installment, determined under Section 6654(d)(2) of the Internal Revenue Code, shall not include ''alternative minimum taxable income'' or ''adjusted self-employment income.''

(d) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, shall not apply.

(2) No addition to the tax shall be imposed under this section if any of the following applies:

(A) The tax imposed under Section 17041 or 17048 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than two hundred dollars ($200), except in the case of a separate return filed by a married person the amount shall be less than one hundred dollars ($100).

(B) Eighty percent or more of the tax imposed under Section 17041 or 17048 for the preceding taxable year, less any credits against the tax other than the credit allowed under Section 19002, was paid by withholding pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(C) Eighty percent or more of the estimated tax for the taxable year will be paid by withholding of tax pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(D) Eighty percent or more of the adjusted gross income for the taxable year consists of items subject to withholding pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(3) Paragraph (2) shall not apply if the employee files a false or fraudulent withholding exemption certificate for the taxable year, or the taxpayer provides a false or fraudulent document or documents to obtain reduced withholding at source for the taxable year.

(e) Section 6654(f) of the Internal Revenue Code shall not apply and for purposes of this section the term ''tax'' means the tax imposed under Section 17041 or 17048, less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(f) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(g) This section shall apply to a nonresident individual.

(h) No addition to tax shall be made under this section for any period before April 16, 1999, with respect to any underpayment of an installment for the 1998 taxable year, to the extent that the underpayment

was created or increased as the result of a distribution to which Section 408A(d)(3) of the Internal Revenue Code, relating to rollovers from an IRA other than a Roth IRA, applies.

SEC. 19. Section 19136.3 of the Revenue and Taxation Code is amended to read:

19136.3. (a) No addition to tax shall be made under Section 19136 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 or 1998 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding or amending this section.

(b) No addition to tax shall be made under Section 19142 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 or 1998 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding or amending this section.

(c) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.

SEC. 20. Section 19136.6 of the Revenue and Taxation Code is amended to read:

19136.6. (a) No addition to tax shall be made under Section 19136 for any period before April 16, 1999, with respect to any underpayment of an installment for the 1998 taxable year, to the extent that the underpayment was created or increased by the act adding this section.

(b) No addition to tax shall be made under Section 19142 for any period before April 16, 1999, with respect to any underpayment of an installment for the 1998 taxable year, to the extent that the underpayment was created or increased by the act adding this section.

(c) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 21. Section 19141.2 of the Revenue and Taxation Code is amended to read:

19141.2. (a) Section 6038 of the Internal Revenue Code, relating to information with respect to certain foreign corporations, shall apply, except as otherwise provided.

(b) Section 6038(a) is modified as follows:

(1) The information required to be filed with the Franchise Tax Board under this section shall be a copy of the information required to be filed with the Internal Revenue Service.

(2) The term ''United States person,'' as defined in Section 7701(a)(30) of the Internal Revenue Code, shall be limited to a domestic corporation, as defined in Section 7701(a) of the Internal Revenue Code, or a bank, as defined in Section 23039, that is subject to the tax imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5

(commencing with Section 23400), or Chapter 3 (commencing with Section 23501), of Part 11.

(c) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty shall be imposed under this part for failure to furnish information and that penalty shall be determined in accordance with Section 6038 of the Internal Revenue Code, except as otherwise provided.

(A) Section 6038(b) of the Internal Revenue Code shall be modified by substituting ''$1,000'' for ''$10,000'' in each place it appears.

(B) Section 6038(b)(2) of the Internal Revenue Code shall be modified by substituting ''$24,000'' for ''$50,000.''

(2) No penalty shall be imposed under paragraph (1) if the copy of the information required to be filed with the Internal Revenue Service was not attached to the taxpayer's return as originally filed but the taxpayer does both of the following:

(A) Furnishes the copy of the information required to be filed with the Internal Revenue Service either upon its own initiative or within 90 days of notification by the Franchise Tax Board of the requirements of this section.

(B) Agrees to attach a copy of the information required to be filed with the Internal Revenue Service to the taxpayer's original return filed for subsequent taxable years.

(3) All or any portion of the penalty imposed under paragraph (1) may be waived by the Franchise Tax Board when the taxpayer has entered into a voluntary disclosure agreement under Article 8 (commencing with Section 19191) of Chapter 4.

(4) The penalty imposed under this subdivision shall not apply to returns required to be filed for taxable years beginning before January 1, 1998.

(d) This section shall apply to returns required to be filed for taxable years beginning on or after January 1, 1997.

SEC. 22. Section 19141.6 of the Revenue and Taxation Code is amended to read:

19141.6. (a) Each taxpayer determining its income subject to tax pursuant to Section 25101 or electing to file pursuant to Section 25110 shall, for taxable years beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service, that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Section 882 of, or Subpart F of Part III of Subchapter N of, or similar provisions of, the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization, or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) ''Related party'' means corporations that are related because one owns or controls, directly or indirectly, more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) ''Records'' includes any books, papers, or other data.

(c) (1) If a corporation subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), that corporation shall pay a penalty of ten thousand dollars ($10,000) for each taxable year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of the failure to the corporation, that corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars ($10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars ($50,000) if the failure to maintain or the failure to cause another to maintain is not willful. This maximum shall apply with respect to taxable years beginning on or after January 1, 1994, and before the earlier of the first day of the month following the

month in which regulations are adopted pursuant to this section or December 31, 1995.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph (2) whether or not the board begins a proceeding to enforce a subpoena, or subpoena duces tecum, if subparagraphs (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 11 (commencing with Section 23001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a corporation to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena or subpoena duces tecum.

(C) The corporation does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that corporation that it has not substantially complied.

(D) If the corporation fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena, or subpoena duces tecum, is quashed in a proceeding described in subparagraph (B) or the corporation is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from information the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iii) The apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iv) The correct amount of income under Section 882 of, or Subpart F of Part III of Subchapter N of, or similar provisions of, the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the corporation is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena duces tecum for the records or testimony. The appearance of persons or the production of records by reason of the corporation being an agent shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 11 of the items described in subdivision (a).

(C) Determinations made in the sole discretion of the Franchise Tax Board pursuant to this paragraph may be appealed to the State Board of Equalization, in the manner and at the time prescribed by Section 19045 or 19324, or may be the subject of an action to recover tax, in the manner and at a time prescribed by Section 19382. The review of determinations by the board or the court shall be limited to whether the determinations were arbitrary or capricious, or are not supported by substantial evidence.

(3) (A) Notwithstanding any other law or rule of law, any reporting corporation to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena or subpoena duces tecum not later than the 90th day after the subpoena or subpoena duces tecum was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena or subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting corporation that has been notified by the Franchise Tax Board that it has determined that the corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco, shall have jurisdiction to hear any proceeding brought

under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 23. Section 19142 of the Revenue and Taxation Code is amended to read:

19142. Except as provided in Sections 19147 and 19148, in the case of any underpayment of tax imposed under Part 11 (commencing with Section 23001) there shall be added to the tax for the taxable year an amount determined at the rate established under Section 19521 on the amount of the underpayment for the period of the underpayment.

SEC. 24. Section 19144 of the Revenue and Taxation Code is amended to read:

19144. For the purposes of Section 19142 the amount of the underpayment shall be the excess of—

(a) (1) The amount of the installment which would be required to be paid if the estimated tax were equal to the applicable percentage of the tax shown on the return for the taxable year, or (2) in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11 an amount equal to the applicable percentage of the lesser of the tax computed at the rate provided by Section 19024 (but otherwise on the basis of the facts shown on the return and the law applicable to the taxable year), or the tax shown on the return for the taxable year as prescribed by Section 19021, or (3) if no return was filed, the applicable percentage of the tax for that year, over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) For purposes of this section, the ''applicable percentage'' shall be as follows:

(1) For taxable years beginning before January 1, 1998, 95 percent.

(2) For taxable years beginning on or after January 1, 1998, 100 percent.

SEC. 25. 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 taxable 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. 26. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding taxable year if a return showing a liability for tax was filed by the taxpayer for the preceding year and that preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the taxable year as prescribed in Section 19021.

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any taxable year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the taxable year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the taxable year in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting ''two months'' for ''three months.''

(II) Clause (ii) of subparagraph (A) shall be applied by substituting ''four months'' for ''three months.''

(III) Clause (iii) of subparagraph (A) shall be applied by substituting ''seven months'' for ''six months.''

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting ''ten months'' for ''nine months.''

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting ''five months'' for ''three months.''

(II) Clause (iii) of subparagraph (A) shall be applied by substituting ''eight months'' for ''six months.''

(III) Clause (iv) of subparagraph (A) shall be applied by substituting ''eleven months'' for the ''nine months.''

(iii) An election under clause (i) or (ii) shall apply to the taxable year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that taxable year.

(iv) This subparagraph shall apply to income years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the taxable year referred to in subparagraph (A).

''Taxable income'' as used in this paragraph means ''net income'' includable in the measure of tax or ''alternative minimum taxable income'' (as defined by Section 23455).

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting ''two months'' for ''three months.''

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting ''four months'' for ''three months.''

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting ''seven months'' for ''six months.''

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting ''ten months'' for ''nine months.''

(3) The applicable percentage specified in Section 19144 or more of the tax for the taxable year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the net income for the taxable year consists of items from which an amount was withheld pursuant to Section 18662, the amount of the first installment under Section 19025 equals at least the minimum franchise tax specified in Section 23153, and the amount of any installment under Section 19025 includes an amount equal to the applicable tax under Section 23800.5.

(b) (1) For purposes of this section, ''large corporation'' means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars ($1,000,000) or more for any taxable year during the testing period.

(2) For purposes of this subdivision, ''testing period'' means the three taxable years immediately preceding the taxable year involved.

SEC. 27. Section 19148 of the Revenue and Taxation Code is amended to read:

19148. (a) Notwithstanding Sections 19142 to 19147, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of that installment equals or exceeds the applicable percentage specified in Section 19144 of the amount determined under subdivision (b).

(b) The amount determined under this subdivision for any installment shall be determined in the following manner:

(1) Take the net income for all months during the taxable year preceding the filing month.

(2) Divide that amount by the base period percentage for all months during the taxable year preceding the filing month.

(3) Determine the tax on the amount determined under paragraph (2).

(4) Multiply the tax computed under paragraph (3) by the base period percentage for the filing months and all months during the taxable year preceding the filing month.

(c) For purposes of this subdivision:

(1) The base period percentage for any period of months shall be the average percent which the net income for the corresponding months in each of the three preceding taxable years bears to the net income for the three preceding taxable years.

(2) ''Filing month'' means the month in which the installment is required to be paid.

(3) This subdivision shall only apply if the base period percentage for any six consecutive months of the taxable year equals or exceeds 70 percent.

(4) The Franchise Tax Board may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

SEC. 28. Section 19150 of the Revenue and Taxation Code is amended to read:

19150. The application of Sections 19142 to 19151, inclusive, to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board.

SEC. 29. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(b) The modifications to Section 6662 of the Internal Revenue Code by Public Law 103-66 and Public Law 103-465 shall apply with respect to returns filed for taxable years beginning on or after January 1, 1997.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty.

(d) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(e) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

SEC. 30. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified business entity or qualified

shareholder, as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified business entity or qualified shareholder.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for business entities to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from business entities for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from business entities to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the business entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the business entity was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reliance on the advice of a person in a fiduciary position or other competent advice that the business entity's activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the business entity.

(E) Demonstrations of good faith on the part of the business entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified business entities or qualified shareholders, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified business entity or qualified shareholder as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified business entity or qualified shareholder, except as provided in paragraph (4) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified business entity or qualified shareholder shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the business entity's application all material facts pertinent to the business entity's and shareholder's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 31. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article:

(a) (1) ''Qualified business entity'' means an entity that is all of the following:

(A) An entity that is a corporation, as defined in Section 23038.

(B) A business entity, including any predecessors to the business entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) A business entity, including any predecessors to the business entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) A business entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable years.

(2) (A) Notwithstanding paragraph (1), a qualified business entity does not include any of the following:

(i) A business entity that is organized and existing under the laws of this state.

(ii) A business entity that is qualified or registered with the office of the Secretary of State.

(iii) A business entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) ''Qualified shareholder'' means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an S corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder's liability would be disclosed on that S corporation's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the S corporation that filed an application under this article.

(b) ''Signing date'' of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 32. Section 19193 of the Revenue and Taxation Code is amended to read:

19193. Nothing in this article shall be construed to mean that by accepting and signing a voluntary disclosure agreement the Franchise

Tax Board abdicates the right and authority to examine returns and determine the correct amount of tax for any of the taxable years covered by the voluntary disclosure period agreed upon and to assess any additional tax, penalty, or interest owed as a result of that examination.

SEC. 33. Section 19194 of the Revenue and Taxation Code is amended to read:

19194. (a) Notwithstanding any other provision of this article, a voluntary disclosure agreement shall be null and void in the event that the Franchise Tax Board finds that with respect to the agreement any of the following circumstances exist:

(1) The qualified business entity has misrepresented any material fact in applying for the voluntary disclosure agreement or in entering into the agreement.

(2) The qualified business entity fails to file any returns for any taxable year covered by the voluntary disclosure period agreed upon on or before the due date prescribed under the terms of the agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(3) (A) The qualified business entity fails to pay in full any tax, penalty, or interest due within the time prescribed under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191 or to pay any installments thereof due within the time prescribed under the terms of an installment payment arrangement in accordance with subparagraph (B).

(B) The Franchise Tax Board may enter into an installment payment arrangement, which shall include provisions for interest, in lieu of the full payment required under paragraph (2) of subdivision (d) of Section 19191. Failure by the qualified business entity to comply with the terms of the installment payment arrangement shall also render the voluntary disclosure arrangement null and void.

(4) The tax shown by the qualified business entity on its tax return filed for any taxable year covered by the voluntary disclosure agreement, including any amount shown on a qualified amended return, as defined in Section 1.6664-2(c)(3) of Title 26 of the Code of Federal Regulations, understates by 10 percent or more the tax imposed under either Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and the qualified business cannot demonstrate to the satisfaction of the Franchise Tax Board that a good-faith effort was made to accurately compute the tax.

(5) The qualified taxpayer fails to begin to prospectively comply with all franchise and income tax laws of this state as agreed upon under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(b) In the event that the Franchise Tax Board finds that the qualified business entity has failed to comply under any of the circumstances

which render the voluntary disclosure agreement null and void as set forth in subdivision (a), the limitation on assessment for any taxable years and the waiver of any penalties as provided for in paragraph (1) of subdivision (d) of Section 19191 shall not be binding on the Franchise Tax Board.

SEC. 34. Section 19363 of the Revenue and Taxation Code is amended to read:

19363. Credits or refunds of overpayments of estimated tax shall be made by the Franchise Tax Board as provided in this article. Any amount paid as estimated tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year (determined without regard to any extension of time for filing the return).

SEC. 35. Section 19364 of the Revenue and Taxation Code is amended to read:

19364. If any overpayment of tax is claimed as a credit against estimated tax for the succeeding taxable year, that amount shall be considered as payment of the tax for the succeeding year (whether or not claimed as a credit in the return of estimated tax for that succeeding year), and no claim for credit or refund of that overpayment shall be allowed for the taxable year in which the overpayment arises.

SEC. 36. Section 19365 of the Revenue and Taxation Code is amended to read:

19365. (a) (1) A corporation electing to be treated as an ''S corporation'' under Chapter 4.5 (commencing with Section 23800) of Part 11 may file an application for the transfer of an overpayment with respect to payments of estimated tax for taxable years beginning in 1997 to the personal income tax accounts of its shareholders. An application under this subdivision shall not constitute a claim for credit or refund.

(2) An application under this subdivision shall be verified in the manner prescribed by Section 18621 in the case of the taxpayer, and shall be filed in the manner and form prescribed by the Franchise Tax Board. The application shall set forth all of the following:

(A) The amount the ''S corporation'' estimates as its tax liability under this part for the taxable year, which shall not be less than the greater of $1^1/_2$ percent of its net income or the applicable minimum franchise tax.

(B) The amount and date of the estimated tax paid during the taxable year.

(C) For each shareholder affected, his or her name, social security account number, address, and percentage of ownership, and any changes in that percentage of ownership for the S corporation's taxable year, the amount of each overpayment to be transferred, and the date the amount was paid.

(D) Any other information for purposes of carrying out this section as may be required by the Franchise Tax Board.

(b) (1) Within a period of 45 days from the date on which an application for a transfer is filed under subdivision (a), the Franchise Tax Board shall make, to the extent it deems practicable in that period, a limited examination of the application to discover omissions and errors therein, and shall determine the final amount of the transfers upon the basis of the application and the examination, except that the Franchise Tax Board may disallow, without further action, any application which it finds contains material omissions or errors which it deems cannot be corrected within the 45-day period.

(2) The Franchise Tax Board, within the 45-day period referred to in paragraph (1), may credit the amount of the overpayment against any liability on the part of the taxpayer under Part 11 (commencing with Section 23001).

(3) In the event the amount available for transfer is less than requested by the taxpayer, the overpayment amount shall be allocated among the shareholders on a pro rata basis based on their percentage of ownership stated on the application.

(4) For purposes of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and this part, the transferred amounts shall be treated as if they had been estimated tax payments paid by the respective shareholders on the date originally paid by the corporation.

(5) No application under subdivision (a) shall be allowed unless the amount to be transferred equals or exceeds five hundred dollars ($500).

(6) Each S corporation which files an application for transfer of overpayments under subdivision (a) shall furnish to each person who is a shareholder at any time during the taxable year a statement showing amounts and dates of the overpayments being transferred to that person's personal income tax account.

SEC. 37. Section 19503 of the Revenue and Taxation Code is amended to read:

19503. (a) The Franchise Tax Board shall prescribe all rules and regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), and this part and may prescribe the extent to which any ruling (including any judicial decision or any administrative determination other than by regulation) shall be applied without retroactive effect.

(b) (1) Except as otherwise provided in this subdivision, no regulation relating to Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), or this part shall apply to any taxable year ending before

the date on which any notice substantially describing the expected contents of any regulation is issued to the public.

(2) Paragraph (1) shall not apply to either of the following:

(A) Regulations issued within 24 months of the date of the enactment of the statutory provision to which the regulation relates.

(B) Regulations issued within 24 months of the date that temporary or final federal regulations with respect to statutory provisions to which California conforms are filed with the Federal Register.

(3) The Franchise Tax Board may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) The Franchise Tax Board may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) The limitation of paragraph (1) shall not apply to any regulation relating to the Franchise Tax Board's policies, practices, or procedures.

(6) The limitation of paragraph (1) may be superseded by a legislative grant of authority to the Franchise Tax Board to prescribe the effective date with respect to any regulation.

(7) The Franchise Tax Board may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(c) The amendments made by the act adding this subdivision are operative with respect to regulations which relate to California statutory provisions enacted on or after January 1, 1998.

SEC. 38. Section 19565 of the Revenue and Taxation Code is amended to read:

19565. (a) If an organization is exempt from taxation under Section 23701 for any taxable year, the application filed by the organization with respect to which the Franchise Tax Board made its determination that the organization was entitled to exemption under Section 23701, together with any papers submitted in support of the application, and any letter or other document issued by the Franchise Tax Board, with respect to the application, shall be open to public inspection. Any inspection under this subdivision may be made at the times, and in the manner, as the Franchise Tax Board shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subdivision, the Franchise Tax Board shall, on the request of any person with respect to the organization, furnish a statement indicating the section which it has been determined describes the organization.

(b) Upon request of the organization submitting any supporting papers described in subdivision (a), the Franchise Tax Board shall withhold from public inspection any information contained therein which it determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if it determines that public disclosure of the information would adversely affect the organization.

The Franchise Tax Board shall withhold from public inspection any information contained in supporting papers described in subdivision (a) the public disclosure of which it determines would adversely affect the national defense.

(c) The Franchise Tax Board may impose a reasonable charge for supplying any information the disclosure of which is permitted under this section.

SEC. 39. Section 21026 of the Revenue and Taxation Code is amended to read:

21026. (a) Except as otherwise provided in subdivision (b), for taxable years beginning on or after January 1, 1998, the board shall, not less than annually, mail a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

(b) Subdivision (a) shall not apply to accounts where a previously mailed notice to the address of record was returned to the board as undeliverable, or to accounts that are discharged from accountability pursuant to Chapter 3 (commencing with Section 13940) of Part 4 of Division 3 of Title 2 of the Government Code.

SEC. 40. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term ''tax'' includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term ''tax'' does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term ''tax'' shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the ''tax'' in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the ''tax,'' allow the excess to be carried over to offset the ''tax'' in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the ''tax'' below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any 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 ''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 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in

Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

SEC. 41. Section 23041 of the Revenue and Taxation Code is amended to read:

23041. ''Taxable year'' means:

(a) For calendar or fiscal years beginning before January 1, 2000, the purposes of the tax imposed under Chapter 2 (commencing with Section 23101), the calendar year, or the fiscal year for which the tax is payable.

(b) For the purposes of the tax imposed under Chapter 1.5 (commencing with Section 23081), Chapter 3 (commencing with Section 23501), or Chapter 4 (commencing with Section 23701), the calendar year or the fiscal year upon the basis of which the net income is computed.

(c) For purposes of the tax imposed under Chapter 2.5 (commencing with Section 23400), (1) in the case of a taxpayer subject to the tax imposed under Chapter 2 (commencing with Section 23101), the calendar year or the fiscal year for which the tax is payable and (2) in the case of a taxpayer subject to the tax imposed under Chapter 3 (commencing with Section 23501) or Chapter 4 (commencing with Section 23701), the calendar or fiscal year upon the basis of which the net income is computed.

(d) For the purpose of the taxes imposed under this part, a period of 12 months or less.

(e) When referring to a calendar or fiscal year beginning before January 1, 2000, upon the basis of which the net income is computed, the term ''taxable year'' shall mean ''income year,'' as defined in subdivision (a) of Section 23042.

SEC. 42. Section 23042 of the Revenue and Taxation Code is amended to read:

23042. (a) For taxable years beginning prior to January 1, 2000, and the first taxable year beginning on or after January 1, 2000, ''income year'' means:

(1) For the purposes of the tax imposed under Chapter 2 (commencing with Section 23101), the calendar year or the fiscal year upon the basis of which the net income is computed. ''Income year'' means, for the purposes of the tax imposed under Chapter 2

(commencing with Section 23101), in the case of a return made for a fractional part of a year, the period for which such return is made.

(2) For the purposes of the tax imposed under Chapter 1.5 (commencing with Section 23081), Chapter 3 (commencing with Section 23501), or Chapter 4 (commencing with Section 23701), wherever ''income year'' is used throughout this part, it means ''taxable year'' as that term is defined in Section 23041 for the purposes of the tax imposed under Chapter 1.5 (commencing with Section 23081), Chapter 3 (commencing with Section 23501), or Chapter 4 (commencing with Section 23701).

(3) For purposes of the tax imposed under Chapter 2.5 (commencing with Section 23400), the same as defined in subdivision (a) with respect to a taxpayer subject to the tax imposed under Chapter 2 (commencing with Section 23101) and the same as defined in subdivision (b) with respect to a taxpayer subject to the tax imposed under Chapter 3 (commencing with Section 23501) or Chapter 4 (commencing with Section 23701).

(b) For taxable years (other than the first taxable year) beginning on or after January 1, 2000, the term ''income year'' shall have the same meaning as the term ''taxable year'' (as defined by Section 23041).

SEC. 43. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms ''Internal Revenue Code,'' ''Internal Revenue Code of 1954,'' or ''Internal Revenue Code of 1986,'' for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5.

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, a reference to any of the following shall not be applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(3) For taxable years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by ''the secretary'' shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by ''the secretary'' shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner which may be required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term ''taxable income'' shall mean ''net income.''

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term ''taxable income'' shall mean ''unrelated business taxable income,'' as defined by Section 23732.

(3) Any reference to ''subtitle,'' ''Chapter 1,'' or ''chapter'' shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of ''Franchise Tax Board'' for ''secretary'' when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a ''corporation'' shall, when applicable for purposes of this part, include a ''bank,'' as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 44. Section 23058 of the Revenue and Taxation Code is amended to read:

23058. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of tax, penalties, or the allowance of credits against the tax, shall be applied to taxable years beginning on or after January 1 of the year in which the act takes effect.

(b) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

SEC. 45. Section 23104 of the Revenue and Taxation Code is amended to read:

23104. (a) For purposes of this part only, any corporation that is not incorporated under the laws of this state and whose sole activity in this state is engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, for seven or fewer calendar days, or any portion thereof, during the taxable year and that does not derive more than ten thousand dollars ($10,000) of gross income reportable to this state from those activities during that taxable year is not a corporation doing business in this state.

(b) For purposes of this section, the determination of gross income reportable to this state of a taxpayer shall be made by including the gross income reportable to this state of each member of the ''commonly controlled group'' (as defined by Section 25105) of which the taxpayer is a member.

SEC. 46. Section 23114 of the Revenue and Taxation Code is amended to read:

23114. A corporation shall not be subject to the taxes imposed by this chapter if the corporation did no business in this state during the taxable year and the taxable year was 15 days or less.

SEC. 47. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. (a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 to 1996, inclusive, and for any income year beginning before January 1, 1997, the tax rate shall be 9.3 percent.

(e) For any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

(f) (1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 48. Section 23151.1 of the Revenue and Taxation Code is amended to read:

23151.1. Notwithstanding Section 23151, every corporation (except banks and financial corporations) doing business within the limits of this state and not exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) With respect to corporations, other than those described in subdivision (b), which commence doing business within the state after December 31, 1971, and before January 1, 2000, the tax for the taxable year of commencement, whether or not for 12 full months, shall be the minimum franchise tax prescribed in Section 23153.

(b) If after December 31, 1972, a corporation commences to do business and ceases doing business in the same taxable year, the tax for that taxable year shall be according to or measured by its net income for the year, to be computed at the rate prescribed in Section 23151.

(c) (1) With respect to taxable years beginning after December 31, 1972, and before January 1, 2000, other than the year of commencement described in subdivision (a) or (b) or the year of cessation described in subdivision (d), the tax for that taxable year shall be according to or measured by its net income for the next preceding taxable year, to be computed at the rate prescribed in Section 23151.

(2) With respect to taxable years beginning on or after January 1, 2000, (other than the first taxable year beginning on or after that date),

the tax for the taxable year (including the taxable year of commencement and the taxable year of cessation) shall be according to or measured by its net income for the taxable year to be computed at the rate prescribed in Section 23151.

(d) With respect to corporations which cease doing business in a taxable year beginning after December 31, 1972, and before January 1, 2000, other than those described in subdivision (b), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding taxable year, to be computed at the rate prescribed in Section 23151, plus

(2) According to or measured by its net income for the taxable year during which the corporation ceased doing business, to be computed at the rate prescribed in Section 23151.

(e) In any event, the tax for any taxable year shall not be less than the minimum tax provided for in Section 23153 for that taxable year.

SEC. 49. Section 23151.2 of the Revenue and Taxation Code is amended to read:

23151.2. Notwithstanding Section 23151, every corporation (except banks and financial corporations) not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the taxable year in which it ceased doing business, unless that income has previously been included in the measure of tax for any taxable year, to be computed at the rate prescribed in Section 23151 for its taxable year of dissolution or withdrawal. In any event, the tax for the taxable year of its dissolution or withdrawal shall not be less than the minimum tax provided for in Section 23153 for that taxable year.

SEC. 50. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years, commencing with the first taxable 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), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, 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 taxable 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 taxable 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 taxable 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 taxable year.

(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 taxable 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. 51. Section 23181 of the Revenue and Taxation Code is amended to read:

23181. (a) Except as otherwise provided herein, an annual tax is hereby imposed upon every bank doing business within the limits of this state according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(b) If a bank commences to do business and ceases doing business in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186.

(c) With respect to a bank, other than a bank described in subdivision (b), which ceases doing business after December 31, 1972, the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the bank ceased doing business, to be computed at the rate prescribed in Section 23186.

(d) In the case of a bank which ceased doing business before January 1, 1973, but dissolves or withdraws on such date or thereafter, the tax for the taxable year of dissolution or withdrawal shall be according to or measured by its net income for the income year during which the bank ceased doing business, unless such income has previously been included in the measure of tax for any taxable year, to be computed at the rate

prescribed under Section 23186 for the taxable year of dissolution or withdrawal.

(e) Commencing with income years ending in 1980, every bank shall pay to the state a minimum tax (determined in accordance with Section 23153) or the measured tax imposed on its income, whichever is greater.

(f) (1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 52. Section 23183 of the Revenue and Taxation Code is amended to read:

23183. (a) For taxable years beginning before January 1, 2000, an annual tax is hereby imposed upon every financial corporation doing business within the limits of this state and taxable under the provisions of Section 27 of Article XIII of the Constitution of this state, for the privilege of exercising its corporate franchises within this state, according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(b) For purposes of this article, the term "financial corporation'' does not include any corporation, including a wholly owned subsidiary of a bank or bank holding company, if the principal business activity of such entity consists of leasing tangible personal property.

(c) (1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 53. Section 23183.1 of the Revenue and Taxation Code is amended to read:

23183.1. Notwithstanding Section 23183, every financial corporation doing business within the limits of this state and not exempted from taxation by the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) If a financial corporation commences to do business and ceases doing business in the same taxable year, the tax for that taxable year shall be according to or measured by its net income for that year, at the rate provided under Section 23186.

(b) (1) With respect to taxable years beginning before January 1, 2000, other than the year of commencement described in subdivision (a) or the year of cessation described in subdivision (c), a tax according to or measured by its net income, to be computed at the rate prescribed in Section 23186 upon the basis of its net income for the next preceding income year.

(2) With respect to taxable years beginning on or after January 1, 2000 (other than the first taxable year beginning on or after that date), the tax for the taxable year (including the taxable year of commencement and the taxable year of cessation) shall be a tax according to or measured by its net income, to be computed at the rate prescribed in Section 23186 upon the basis of its net income for the taxable year.

(c) With respect to financial corporations, which cease doing business in a taxable year beginning before January 1, 2000, other than those described in subdivision (a), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the financial corporation ceased doing business, to be computed at the rate prescribed in Section 23186.

SEC. 54. Section 23183.2 of the Revenue and Taxation Code is amended to read:

23183.2. Notwithstanding Section 23183, every financial corporation not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the taxable year in which it ceased doing business, to be computed at the rate prescribed in Section 23186 for its taxable year of dissolution or withdrawal, unless the income has previously been included in the measure of tax for any taxable year.

SEC. 55. Section 23186 of the Revenue and Taxation Code is amended to read:

23186. For taxable years ending on or after December 31, 1995, the rate of tax on banks and financial corporations shall be the rate of tax specified in Section 23151, plus 2 percent.

SEC. 56. Section 23253 of the Revenue and Taxation Code is amended to read:

23253. Section 381(b) of the Internal Revenue Code, relating to operating rules, shall apply in determining the close of the taxable year. If a short period year is required by use of Section 381(b) of the Internal Revenue Code, the transferor's short year tax shall be computed using the provisions of Section 23151.1 for general corporations or Section 23181 for banks and financial corporations.

SEC. 57. Section 23281 of the Revenue and Taxation Code is amended to read:

23281. (a) (1) When a taxpayer ceases to do business within the state during any taxable year and does not dissolve or withdraw from the state during that year, and does not resume doing business during the succeeding taxable year, its tax for the taxable year in which it resumes doing business prior to January 1, 2000, shall be the greater of the following:

(A) The tax computed upon the basis of the net income of the income year in which it ceased doing business, except where the income has already been included in the measure of a tax imposed by this chapter.

(B) The minimum tax prescribed in Section 23153.

(2) When a taxpayer ceases to do business within the state during any taxable year and does not dissolve or withdraw from the state during that year, and does not resume doing business during the succeeding taxable year, its tax for the taxable year in which it resumes doing business, on or after January 1, 2000, shall be according to or measured by its net income for the taxable year in which it resumes doing business.

(b) The tax shall be due and payable at the time the corporation resumes doing business, or on or before the 15th day of the third month following the close of its taxable year, whichever is later. All the provisions of this part relating to delinquent taxes shall be applicable to the tax if it is not paid on or before its due date.

(c) This section does not apply to a corporation which became subject to Chapter 3 (commencing with Section 23501) after it discontinued doing business in this state (see Section 23224.5).

SEC. 58. Section 23282 of the Revenue and Taxation Code is amended to read:

23282. (a) The tax imposed upon any taxpayer which has suffered the suspension or forfeiture provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be computed in the same manner as provided in Sections 23222 to 23224, inclusive, relative to the computation of taxes upon taxpayers commencing to do business for the first time after incorporation or qualification. In addition to the taxes, penalties, and interest specified in Section 23305, such taxpayer shall prepay a tax in an amount equal to the minimum tax provided for in Section 23153 as a condition precedent to the issuance of a certificate of revivor.

(b) After December 31, 1971, and before January 1, 2000, the tax imposed upon any taxpayer which has suffered the suspension or forfeiture provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be—

(1) In the case of a taxpayer which was doing business in the year next preceding the year in which revivor took place, computed upon the basis of the net income for that next preceding income year,

(2) In the case of a taxpayer which resumed doing business in the year of revivor, computed upon the basis of the net income for the year in which it ceased doing business, unless such income is or has otherwise been subject to tax,

(3) In the case of a taxpayer which first commences to do business in the year of revivor, the minimum tax provided in Section 23153,

(4) In no event less than the minimum tax provided in Section 23153.

In addition to the taxes, penalties, and interest specified in Section 23305, such taxpayer shall prepay the minimum tax imposed by this subdivision as a condition precedent to the issuance of a certificate of revivor.

(c) After December 31, 1999, the tax imposed upon any taxpayer that has suffered the suspension or forfeiture provided in Section 23301, and that revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be computed upon the basis of the net income for the taxable year in which it revives, but in no event less than the minimum tax provided in Section 23153.

SEC. 59. Section 23301 of the Revenue and Taxation Code is amended to read:

23301. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if any of the following conditions occur:

(a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, either at the time the return is required to be filed or on or before the 15th day of the ninth month following the close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the taxable year.

(b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, upon notice and demand from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.

(c) If any liability, or any portion thereof, which is due and payable under Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2, is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

SEC. 60. Section 23304.1 of the Revenue and Taxation Code is amended to read:

23304.1. (a) Every contract made in this state by a taxpayer during the time that the taxpayer's corporate powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(b) If a foreign taxpayer that neither is qualified to do business nor has a corporate account number from the Franchise Tax Board, fails to file a tax return required under this part, any contract made in this state by that taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(c) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 1991, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this state or the date the taxpayer obtained a corporate account number from the Franchise Tax Board.

(d) If a taxpayer fails to file a tax return required under this part, to pay any tax or other amount owing to the Franchise Tax Board under this part or to file any statement or return required under Section 23772 or

23774, within 60 days after the Franchise Tax Board mails a written demand therefor, any contract made in this state by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date relief is granted under Section 23305.1, or the date the taxpayer qualifies to do business in this state, whichever is earlier, shall be voidable at the instance of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the taxpayer has a corporate account number from the Franchise Tax Board, but has not qualified to do business under Section 2105 of the Corporations Code. In the case of a taxpayer that has not complied with the 60-day demand, the taxpayer's name, Franchise Tax Board corporate account number, date of the demand, date of the first day after the end of the 60-day demand period, and the fact that the taxpayer did not within that period pay the tax or other amount or file the statement or return, as the case may be, shall be a matter of public record.

SEC. 61. Section 23305.1 of the Revenue and Taxation Code is amended to read:

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested in accordance with subdivision (b).

(3) File any tax returns required to be filed under this part with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(6) In the case of a taxpayer that applies for and enters into an approved voluntary disclosure agreement in accordance with Article 8 (commencing with Section 19191) of Chapter 4 of Part 10.2, for purposes of this section, the taxpayer shall be considered to have met the requirements of paragraphs (3), (4), and (5) if the taxpayer fulfills to the satisfaction of the Franchise Tax Board all the specifications of the voluntary disclosure agreement within the meaning of paragraph (2) of subdivision (d) of Section 19191 and if the Franchise Tax Board has not found that any of the circumstances described in Section 19194 has rendered the voluntary disclosure agreement null and void.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's taxable years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section 23151 and, except as provided in subparagraph (C), that penalty shall be equal to no less than the amount of the minimum tax provided under Section 23153 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to Article 2 (commencing with Section 23731) of Chapter 4 (the tax on unrelated business taxable income), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 23302 and which has not been rescinded by a final court order pursuant to Section 23304.5, shall be as valid as if the

taxpayer had not been subject to subdivision (d) of Section 23302 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.

(e) Subject to limitations set forth in Section 17 of Chapter 926 of the Statutes of 1990, a taxpayer that received a certificate of revivor between January 1, 1990, and January 1, 1991, may apply for relief from voidability under this section.

SEC. 62. Section 23361 of the Revenue and Taxation Code is amended to read:

23361. ''Affiliated group'' means one or more chains of corporations connected through stock ownership with a common parent corporation if during the period when the income was accrued or realized and on the 16th day of the first month after the close of the taxable year—

(a) At least 80 percent of the stock of each of the corporations, except the common parent corporation, is owned directly by one or more of the other corporations; and

(b) The common parent corporation owns directly at least 80 percent of the stock of at least one of the other corporations; and

(c) Each of the corporations except the common parent corporation is either (1) a corporation whose principal business is that of a common carrier by railroad or (2) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad.

The provisions of this section shall not preclude the application of Chapter 17 (commencing with Section 25101) of this part.

Except in paragraph (c), ''stock'' does not include nonvoting stock which is limited and preferred as to dividends.

SEC. 63. Section 23362 of the Revenue and Taxation Code is amended to read:

23362. An affiliated group, subject to the provisions of this article, shall have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations, which have been members of the affiliated group at any time during the taxable year for which the return is made, consent to all regulations under Section 23363 prescribed prior to the making of such return and the making of a consolidated return shall be considered as such consent. In the case of a corporation, which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the taxable year as it is a member of the affiliated group. In the case of a common parent company which is not itself a common carrier by railroad the consolidated return shall include on a consolidated-return basis only the income received from affiliates which are common carriers by railroad.

SEC. 64. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than banks or financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to organizations or trusts subject to tax under Article 2 (commencing with Section 23731) of Chapter 4, on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative minimum taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Article 4 (commencing with Section 23221) to Article 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 18601, 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, and 23504 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter.

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this chapter, ''regular tax'' means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4, but does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

(d) The rate of 7 percent prescribed in subdivision (a) shall be 6.65 percent for any taxable year beginning on or after January 1, 1997. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

SEC. 65. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during taxable years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(3) (A) Section 56(a)(6) of the Internal Revenue Code, as in effect on January 1, 1997, relating to installment sales of certain property, shall not apply to payments received in taxable years beginning on or after January 1, 1997, with respect to dispositions occurring in taxable years beginning after December 31, 1987.

(B) This paragraph shall not apply to any taxable year beginning on or after January 1, 1998.

(b) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to ''December 31, 1986,'' are modified to read ''December 31, 1987,'' and all references to ''January 1, 1987,'' are modified to read ''January 1, 1988.''

(c) Section 56(d)(1) of the Internal Revenue Code, relating to the alternative tax net operating loss deduction, is modified to include the provisions of Section 25108.

(d) For each taxable year beginning on or after January 1, 1988, and before January 1, 1990, Section 56(f)(2)(E) of the Internal Revenue Code, as it read during that period, is modified to refer to both of the following:

(1) Cooperatives under Section 24404 in lieu of the deduction allowed under Section 1382(b) of the Internal Revenue Code.

(2) Credit unions under Section 24405 as though the deduction allowed under Section 1382(b) of the Internal Revenue Code applied to credit unions.

(e) Section 56(g) of the Internal Revenue Code, relating to adjustments based on adjusted current earnings, is modified to provide that for corporations whose income is determined under Chapter 17 (commencing with Section 25101), adjusted current earnings shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax. In addition, each of the following shall apply:

(1) Sections 56(g)(1)(A) and 56(g)(3) of the Internal Revenue Code are modified to provide that the term ''adjusted current earnings'' means the sum of the adjusted current earnings of that corporation apportionable to this state and the adjusted current earnings allocable to this state.

(2) Section 56(g)(1)(B) of the Internal Revenue Code is modified to provide that the term ''alternative minimum taxable income'' means the sum of the alternative minimum taxable income of that corporation apportionable to this state and the alternative minimum taxable income allocable to this state.

(f) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, other than residential rental property for which an election was made under former Section 24349.5, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of the useful life (determined without regard to Section 24354.2) for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, other than residential rental property for which an election was made under former Section 24349.5, the amount allowable as depreciation or amortization with respect to that property shall be determined by each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last taxable year beginning before January 1, 1990.

(B) Using the straight line method over the remainder of the recovery period applicable to that property under the alternative system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 1990.

(4) The last sentence of Section 56(g)(4)(A)(i) of the Internal Revenue Code, shall not apply to taxable years beginning before January 1, 1998.

(g) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) (i) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(ii) For each taxable year beginning on or after January 1, 1990, a deduction shall be allowed for amounts allowable as a deduction to a credit union for purposes of the regular tax under Section 24405.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100-percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in taxable years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

(h) Section 56(g)(4)(I) of the Internal Revenue Code, relating to treatment of charitable contributions, shall not apply.

SEC. 66. Section 23457 of the Revenue and Taxation Code is amended to read:

23457. For purposes of this part, Section 57 of the Internal Revenue Code is modified as follows:

(a) Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest, shall not be applicable.

(b) (1) (A) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 24357 would be reduced if all capital gain property were taken into account at its adjusted basis.

(B) For purposes of paragraph (A), ''capital gain property'' means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of this subparagraph, any property that is property used in the trade or business,

as defined in Section 1231(b) of the Internal Revenue Code, shall be treated as a capital asset.

(2) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 24348 for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the taxpayer maintained its bad debt reserve for all taxable years on the basis of actual experience.

(c) Section 57(a)(6) of the Internal Revenue Code, relating to accelerated depreciation or amortization on certain property placed in service before January 1, 1987, is modified to read: With respect to each property as described in Section 1250(c) of the Internal Revenue Code as that provision read on April 1, 1970, the amount by which the deduction allowable for the taxable year for exhaustion, wear, tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year, had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

SEC. 67. Section 23604 of the Revenue and Taxation Code is amended to read:

23604. For each taxable year beginning on or after January 1, 1996, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount determined as follows:

(a) (1) (A) The amount of the credit shall be equal to one-third of the federal credit computed in accordance with Section 43 of the Internal Revenue Code.

(B) If a taxpayer elects, under Section 43(e) of the Internal Revenue Code, not to apply Section 43 for federal tax purposes, this election is binding and irrevocable for state purposes, and for purposes of subparagraph (A), the federal credit shall be zero.

(2) ''Qualified enhanced oil recovery project'' shall include only projects located within California.

(3) The credit allowed under this subdivision shall not be allowed to any taxpayer for whom a depletion allowance is not permitted to be computed under Section 613 of the Internal Revenue Code by reason of paragraphs (2), (3), or (4) of subsection (d) of Section 613A of the Internal Revenue Code.

(b) Section 43(d) of the Internal Revenue Code shall apply.

(c) 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 succeeding 15 years.

(d) In the case where property which qualifies as part of the taxpayer's ''qualified enhanced oil recovery costs'' also qualifies for a credit under

any other section in this part, the taxpayer shall make an election on its original return as to which section applies to all costs allocable to that item of qualified property. 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.

(e) No deduction shall be allowed as otherwise provided in this part for that portion of any costs paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those costs.

(f) The basis of any property for which a credit is allowed under this section shall be reduced by the amount of the credit attributable to the property. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(g) No credit may be claimed under this section with respect to any amount for which any other credit has been claimed under this part.

SEC. 68. Section 23608 of the Revenue and Taxation Code is amended to read:

23608. (a) In the case of a taxpayer who transports any agricultural product donated in accordance with Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for taxable years beginning on or after January 1, 1996, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036), an amount equal to 50 percent of the transportation costs paid or incurred by the taxpayer in connection with the transportation of that donated agricultural product.

(b) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the expenses paid or incurred.

(c) If any credit allowed by this section is claimed by the taxpayer, any deduction otherwise allowed under this part for that amount of the cost paid or incurred by the taxpayer which is eligible for the credit that is claimed shall be reduced by the amount of the credit allowed.

(d) Upon delivery of the donated agricultural product by a taxpayer authorized to claim a credit pursuant to subdivision (a), the nonprofit charitable organization shall provide a certificate to the taxpayer who transported the agricultural product. The certificate shall contain a statement signed and dated by a person authorized by that organization that the product is donated under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code. The certificate shall also contain the following information: the type and quantity of product donated, the distance transported, the name of the transporter, the name of the taxpayer donor, and the name and address

of the donee. Upon the request of the Franchise Tax Board, the taxpayer shall provide a copy of the certification to the Franchise Tax Board.

(e) In the case where any credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 69. Section 23608.2 of the Revenue and Taxation Code is amended to read:

23608.2. (a) (1) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the ''tax,'' as defined by Section 23036, an amount equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(2) Notwithstanding paragraph (1), no credit shall be allowed until the qualified year, as defined in paragraph (3).

(3) For purposes of this section, the ''qualified year'' is the first taxable year during which the construction or rehabilitation of the qualified farmworker housing is completed and there is occupancy of the qualified farmworker housing by eligible farmworkers.

(b) (1) For purposes of this section, the ''eligible costs'' shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. ''Eligible costs'' include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the payment or incurrence of costs described in paragraph (1) of subdivision (b).

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

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

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the eligible costs described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Credit in excess of the amount necessary to make the project feasible shall not be allocated. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, or each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), eligible costs, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) ''Compliance period'' means, with respect to any farmworker housing, the period of 30 consecutive taxable years, beginning with the taxable year in which the credit is allowable.

(2) ''Construct or rehabilitate'' includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) ''Farmworker Housing Assistance Program'' means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(4) ''Qualified farmworker housing'' means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(5) ''Committee'' means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(6) ''Qualified accountant'' means an accountant licensed or certified in this state who is neither an employee of the taxpayer, nor related to the taxpayer within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 10 (commencing with Section 17001) to the extent of any eligible costs, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of eligible costs from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the ''tax,'' as defined in Section 23036, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, ''disqualifying event'' shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, ''recapture amount'' means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, ''interest amount'' means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted

annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.3 for the calendar year 1998 and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 17053.14 and 23608.3 for the preceding calendar year or years.

SEC. 70. Section 23608.3 of the Revenue and Taxation Code is amended to read:

23608.3. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the ''tax,'' as defined in Section 23036, for a bank or financial corporation as determined in subdivision (b).

(b) (1) For purposes of this section, the credit shall be equal to 50 percent of the difference between the amount of interest income which could have been collected by the bank or financial corporation had the loan rate been one point above prime, or any other index used by the lender, and the lesser amount of interest income actually due for the term of the loan by the bank or financial corporation on those portions of loans used to finance only eligible costs actually paid or incurred to rehabilitate or construct qualified farmworker housing.

(2) The credit allowed under this section shall be taken in equal installments over a period equal to the lesser of 10 years or the term of the loan beginning in the taxpayer's taxable year during which the qualified farmworker housing is completed and there is initial occupancy by eligible farmworkers. In the case where the credit allowed by this section exceeds the ''tax'' for any taxable year, the excess may not be carried over to reduce the ''tax'' in any succeeding year.

(3) The credit shall not apply to loans with a term of less than three years or to loans funded prior to January 1, 1997. The credit shall apply only to interest income from the loan and shall not apply to any other loan fees or other charges collected by the bank or financial corporation with respect to the loan.

(c) The taxpayer shall qualify for the credit by application to and certification by the committee that the expenses qualify for the credit under this section.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the funding of the loan.

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

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

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes the credit amount to which the taxpayer is entitled for the taxable year.

(3) Obtain the taxpayer's taxpayer identification number, and each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, and in a form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), qualified amounts, and total amount of credit certified to each taxpayer.

(f) For the purposes of this section:

(1) ''Construct or rehabilitate'' includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(2) ''Farmworker Housing Assistance Program'' means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(3) ''Eligible costs'' means those expenditures certified by the committee to meet the requirements of Sections 17053.14 and 23608.2.

(4) ''Qualified farmworker housing'' means housing within the state that meets the requirements of the Farmworker Housing Assistance Program.

(g) (1) In the event that the committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation of the taxpayer, there shall be added to the ''tax,'' as defined in Section 23036 for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (2) and the interest amount computed under paragraph (3).

(2) For purposes of this subdivision, ''recapture amount'' means the entire amount of any credit previously allowed under this section.

(3) For purposes of this subdivision, ''interest amount'' means the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for the taxable year in

which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(h) (1) Except as provided in paragraph (2), if the bank or financial corporation sells the loan to another bank or financial corporation, the balance of the credit, if any, shall be transferred to the assignee or transferee of the loan, subject to the same conditions and limitations as set forth in this section.

(2) A bank or financial corporation may assign, sell, or otherwise transfer the loan to another person or entity and retain the right to claim the credit granted under this section if the bank or financial corporation also retains responsibility for servicing the loan.

(i) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.2 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.2 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 17053.14 and 23608.2 for the preceding calendar year or years.

SEC. 71. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each taxable year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''8 percent.''

(2) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''12 percent.''

(b) (1) For each taxable year beginning on or after January 1, 1997, and before January 1, 1999, both of the following modifications shall apply:

(A) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''11 percent.''

(B) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''24 percent.''

(2) For each income year beginning on or after January 1, 1999, both of the following shall apply:

(A) The reference to ''20 percent'' in Section 41(a)(1) of the Internal Revenue Code is modified to read ''12 percent.''

(B) The reference to ''20 percent'' in Section 41(a)(2) of the Internal Revenue Code is modified to read ''24 percent.''

(c) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of ''qualified research expense'' any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.

(2) ''Qualified research'' and ''basic research'' shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that ''basic research,'' for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a ''specialized laboratory cancer center,'' and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) ''Biopharmaceutical research activities'' means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and

diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(B) ''Other biotechnology research and development activities'' means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) For each taxable year beginning on or after January 1, 1998, the reference to ''Section 501(a)'' in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read ''this part or Part 10 (commencing with Section 17001).''

(h) (1) For each taxable year beginning on or after January 1, 1998:

(A) The reference to ''1.65 percent'' in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ''one and thirty-two hundredths of one percent.''

(B) The reference to ''2.2 percent'' in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ''one and seventy-six hundredths of one percent.''

(C) The reference to ''2.75 percent'' in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ''two and two-tenths of one percent.''

(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

(3) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 72. Section 23610 of the Revenue and Taxation Code is amended to read:

23610. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2008, there shall be allowed as a credit against the amount of ''tax,'' as defined in Section 23036, an amount equal to fifteen dollars ($15) for each ton of rice straw, as defined in Section 18944.33 of the Health and Safety Code, that is grown within California and purchased during the taxable year by the taxpayer.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 17052.10 shall not exceed four hundred thousand dollars ($400,000) for each calendar year.

(c) 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 10 taxable years, or until the credit has been exhausted, whichever occurs first.

(d) No deduction shall be claimed for the purchase of rice straw for which a tax credit has been claimed pursuant to this section.

(e) No credit shall be claimed for the purchase of rice straw for which a tax credit has otherwise already been claimed pursuant to this part.

(f) The Department of Food and Agriculture shall do all of the following:

(1) Certify that the taxpayer has purchased the rice straw as specified in subdivision (a).

(2) Issue certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificates shall be issued on a ''first come, first served'' basis to reflect the chronological order that the taxpayer submitted a valid request to the Department of Food and Agriculture.

(3) Provide an annual listing to the Franchise Tax Board (preferably on computer readable form, and in a form or manner agreed upon by the Franchise Tax Board and the Department of Food and Agriculture) of the qualified taxpayers who were issued certificates and the amount of rice straw purchased by each taxpayer.

(4) As part of its allocation request for tax credits, provide the taxpayer with a copy of the certification to retain for the taxpayer's records.

(5) Obtain the taxpayer's identification number, or in the case of a subchapter S corporation, the taxpayer identification numbers of all shareholders.

(6) On or before each June 1 immediately following each year for which the credit under this section is available, provide to the Legislature an informational report with respect to that year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The type of businesses receiving the tax credit certificates.

(C) A general list of the methods used to process the rice straw.

(D) Recommendations on how the credits can be issued in a manner that will maximize the long term use of the California grown rice straw.

(g) To be eligible for the credit under this section the taxpayer shall do all of the following:

(1) As part of its allocation request for tax credits, provide the Department of Food and Agriculture with documents, as deemed necessary by the department, verifying the purchase of rice straw and that it meets the requirements specified in this section.

(2) Retain for the taxpayer's records a copy of the certificate issued by the Department of Food and Agriculture as specified in subdivision (f).

(3) Provide a copy of the certification specified in subdivision (f) to the Franchise Tax Board upon request. If the taxpayer fails to comply with the requirements of this subdivision, no credit shall be allowed to that taxpayer under this section for any taxable year unless the taxpayer subsequently complies.

(4) Provide the Department of Food and Agriculture with the taxpayer's identification number, or in the case of a subchapter S corporation, the taxpayer identification numbers of all shareholders.

(h) (1) For purposes of this section, a credit shall be allowed only if the taxpayer is the ''end user'' of the rice straw. For purposes of this section, ''end user'' shall mean anyone who uses the rice straw for processing, generation of energy, manufacturing, export, prevention of erosion, or for any other purpose, exclusive of open burning, that consumes the rice straw.

(2) The credit shall not be allowed if the taxpayer is related, within the meaning of Section 267 or 318 of the Internal Revenue Code, to any person who grew the rice straw within California.

(i) This section shall remain in effect only until December 1, 2008, and as of that date is repealed.

SEC. 73. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the ''tax'' (as defined by Section 23036) a state low-income housing tax

credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) ''Taxpayer,'' for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) ''Housing sponsor,'' for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor has been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It qualifies for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term ''applicable percentage'' means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is ''at risk of conversion,'' the term ''applicable percentage'' means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion,'' with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term ''qualified low-income housing project'' as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, shall be equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity, which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note, or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the ''floor space fraction,'' as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed at any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term ''credit period'' as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting ''four taxable years'' for ''10 taxable years.''

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for

the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

(1) (A) Except as provided in subparagraph (B), thirty-five million dollars ($35,000,000) for the 1997 calendar year, and each calendar year thereafter, or

(B) Fifty million dollars ($50,000,000) for each of the calendar years 1998 and 1999; and

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term ''compliance period'' as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code

shall apply, provided that the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) A provision that the remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law,

the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate that there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three and more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are ''at risk of conversion,'' as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term ''secretary'' shall be replaced by the term ''California Franchise Tax Board.''

(*l*) In the case where the state credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, ''affiliated corporation'' has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that ''100 percent'' is substituted for ''more than 50 percent'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and ''voting common stock'' is substituted for ''voting stock'' wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as

amended, shall apply to taxable years beginning on or after January 1, 1993.

SEC. 74. 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 taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) ''Taxpayer'' means a 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 taxable 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 taxable 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 taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.7, including any credit carryover from prior years, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) 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 taxable years, as if it were an amount exceeding the ''tax'' for the taxable year, as provided in subdivision (d).

(g) 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. 75. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 2003, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any taxable year.

(c) For purposes of this section, ''startup expenses'' include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) for the taxable year exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the

excess from any one year shall not exceed fifty thousand dollars ($50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the ''tax'' under this section for the taxable year shall be limited to fifty thousand dollars ($50,000) and the amount in excess of the fifty thousand dollar ($50,000) limit may be carried over and applied against the ''tax'' in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(*l*) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.

SEC. 76. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed three hundred sixty dollars ($360) for each qualified dependent.

(c) For purposes of this section:

(1) ''Qualified care plan'' means a plan providing qualified care.

(2) ''Qualified care'' includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. ''Qualified care'' must be provided in this state under the authority of a license when required by California law.

(3) ''Specialized center'' means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) ''Contributions'' include direct payments to child care programs or providers.

(5) ''Qualified employee'' means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning

of Section 25133, during the period in which the qualified care is performed.

(6) ''Employee'' includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) ''Qualified dependent'' means any dependent of a qualified employee who is under the age of 12 years.

(d) If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) If the duration of the child care received is less than 42 weeks, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) If the credit allowed under this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee and is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.

SEC. 77. Section 23621 of the Revenue and Taxation Code is amended to read:

23621. (a) There shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during an taxable year by a taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who is a dependent, as described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the taxpayer (determined with the application of Section 267(c) of the Internal Revenue Code); or

(2) Who is a dependent (as described in paragraph (9) of Section 152(a) of the Internal Revenue Code) of an individual described in paragraph (1).

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual had been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employee has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any taxable year.

(2) An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that taxable year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term ''wages'' shall not include either of the following:

(1) Payments defined in Section 51(c)(3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for an employer after December 31, 1993.

SEC. 78. 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 taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ''qualified wages'' means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the 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 taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive,

subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(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 taxable year in which that employment is terminated shall be increased by an amount equal to the

credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(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 taxable 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 taxable year and all prior taxable 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 taxable year, that portion of the credit that

exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) 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 taxable years, as if it were an amount exceeding the ''tax'' for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years on or after January 1, 1997.

SEC. 79. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the ''tax'' (as defined in Section 23036) to a qualified taxpayer for hiring a qualified

disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Manufacturing Enhancement Area'' means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) ''Manufacturing Enhancement Area expiration date'' means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(6) ''Qualified taxpayer'' means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets all of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, shall be

increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined 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 individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals 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 qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(g) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 the 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 ''tax'' for the taxable year, as provided in subdivision (g).

(h) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 80. Section 23624 of the Revenue and Taxation Code is amended to read:

23624. (a) There shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid or incurred during the taxable year to each prisoner who is employed in a joint venture program established pursuant to Article 1.5 of Chapter 5 of Title 1 of Part 3 of the Penal Code, through agreement with the Director of Corrections.

(b) The Department of Corrections shall forward annually to the Franchise Tax Board a list of all employers certified by the Department of Corrections as active participants in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5 of Title 1 of Part 3 of the Penal Code. The list shall include the certified participant's federal employer identification number.

SEC. 81. Section 23633 of the Revenue and Taxation Code is amended to read:

23633. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the qualified taxpayer in connection with the qualified taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) ''Qualified property'' means property that meets all of the following requirements:

(A) Is any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data-processing and communications equipment, such as computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and post production, such as cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any qualified taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the qualified taxpayer exclusively in a targeted tax area.

(D) The qualified property is purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) (A) ''Qualified taxpayer'' means a corporation that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.33 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term ''pass-through entity'' means any partnership or S corporation.

(3) ''Targeted tax area'' means the area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(c) If the qualified taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) If the qualified taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(e) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(f) Any qualified taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the qualified taxpayer's purchase of qualified property.

(g) (1) The amount of credit otherwise allowed under this section and Section 23634, including any credit carryover from prior years, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the targeted tax area. 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 targeted tax area 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 targeted tax area 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 targeted tax area 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 targeted tax area 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 ''tax'' for the taxable year, as provided in subdivision (e).

(5) In the event that a credit carryover is allowable under subdivision (e) for any taxable year after the targeted tax area designation has expired, has been revoked, is no longer binding, or has become inoperative, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

(h) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 82. Section 23634 of the Revenue and Taxation Code is amended to read:

23634. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the ''tax'' (as defined by Section 23036) to a qualified taxpayer who employs a qualified employee in a targeted tax area during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified 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 qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Targeted tax area expiration date'' means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) ''Qualified employee'' means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for

Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(X) 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) (A) ''Qualified taxpayer'' means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.34 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes

of this subparagraph, the term ''pass-through entity'' means any partnership or S corporation.

(6) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, ''controlled group of corporations'' means ''controlled group of corporations'' as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) ''More than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) (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 qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(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 qualified 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 qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified 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 qualified 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 qualified 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 qualified 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 qualified 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 qualified 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 qualified taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified employee continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) Rules similar to the rules provided in Sections 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(h) For purposes of this section, ''targeted tax area'' means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23633, including any credit carryover from prior years, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the targeted tax area. 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 targeted tax area 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 targeted tax area 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 targeted tax area 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 targeted tax area 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 ''tax'' for the taxable year, as provided in subdivision (h).

(5) In the event that a credit carryover is allowable under subdivision (h) for any taxable year after the targeted tax area designation has expired or been revoked, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 83. Section 23636 of the Revenue and Taxation Code is amended to read:

23636. (a) For each taxable year beginning on or after January 1, 2001, and before January 1, 2006, a qualified taxpayer shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to the following:

(1) Fifty percent of qualified wages paid or incurred during any taxable year beginning on or after January 1, 2001, and before January 1, 2002.

(2) Forty percent of qualified wages paid or incurred during any taxable year beginning on or after January 1, 2002, and before January 1, 2003.

(3) Thirty percent of the qualified wages paid or incurred during any taxable year beginning on or after January 1, 2003, and before January 1, 2004.

(4) Twenty percent of the qualified wages paid or incurred during any taxable year beginning on or after January 1, 2004, and before January 1, 2005.

(5) Ten percent of the qualified wages paid or incurred during any taxable year beginning on or after January 1, 2005, and before January 1, 2006.

(b) For purposes of this section:

(1) (A) ''Qualified taxpayer'' means any taxpayer under an initial contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.36 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or this part. For purposes of this paragraph, ''pass-through entity'' means any partnership or S corporation.

(2) ''Qualified wages'' means that portion of wages paid or incurred by the qualified taxpayer during the taxable year with respect to qualified employees that are direct costs as defined in Section 263A of the Internal Revenue Code allocable to property manufactured in this state by the qualified taxpayer for ultimate use in a Joint Strike Fighter.

(3) ''Qualified employee'' means an individual whose services for the qualified taxpayer are performed in this state and are at least 90 percent directly related to the qualified taxpayer's contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter.

(4) ''Joint Strike Fighter'' means the next generation air combat strike aircraft developed and produced under the Joint Strike Fighter program.

(5) ''Joint Strike Fighter program'' means the multiservice, multinational project conducted by the United States government to develop and produce the next generation of air combat strike aircraft.

(c) The credit allowed by this section shall not exceed ten thousand dollars ($10,000) per year, per qualified employee. For employees that are qualified employees for part of a taxable year, the credit shall not exceed ten thousand dollars ($10,000) multiplied by a fraction, the numerator of which is the number of months of the taxable year that the employee is a qualified employee and the denominator of which is 12.

(d) 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 the seven succeeding years if necessary, until the credit is exhausted.

(e) No credit shall be allowed unless the credit is reflected within the bid upon which the qualified taxpayer's contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter is based by reducing the amount of the bid by the amount of the credit allowable.

(f) All references to the credit and ultimate cost reductions incorporated into any successful bid that was awarded a contract or subcontract and for which a qualified taxpayer is making a claim shall be made available to the Franchise Tax Board upon request.

(g) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

SEC. 84. Section 23637 of the Revenue and Taxation Code is amended to read:

23637. (a) For each taxable year beginning on or after January 1, 2001, and before January 1, 2006, a qualified taxpayer shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to 10 percent of the qualified cost of qualified property that is placed in service in this state.

(b) (1) For purposes of this section, ''qualified cost'' means any costs that satisfy 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, 2001, and before January 1, 2006. 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 before January 1, 2001, 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, 2001, 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, 2001, the cost shall be deemed allocated to property acquired before January 1, 2001, and is thus not a ''qualified cost.''

(B) Except as provided in paragraph (2) 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, 2001, that is a successor or replacement contract to a contract that was binding before January 1, 2001, shall be treated as a binding contract in existence before January 1, 2001.

(B) If a successor or replacement contract is entered into on or after January 1, 2001, 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, 2001, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence before January 1, 2001, 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.

(c) (1) For purposes of this section, ''qualified taxpayer'' means any taxpayer under an initial contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.37 shall be allowed to the pass-through 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 ''pass-through 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) (1) For purposes of this section, ''qualified property'' means property that is described as either of the following:

(A) Tangible personal property that is defined in Section 1245(a)(3)(A) of the Internal Revenue Code for use by a qualified taxpayer primarily in qualified activities to manufacture a product for ultimate use in a Joint Strike Fighter.

(B) The value of any capitalized labor costs that are direct costs as defined in Section 263A of the Internal Revenue Code allocable to the construction or modification of property described in subparagraph (A).

(2) Qualified property does not include any of the following:

(A) Furniture.

(B) Inventory.

(C) Equipment used to store finished products that have completed the manufacturing process.

(D) Any tangible personal property that is used in administration, general management, or marketing.

(e) For purposes of this section:

(1) ''Fabricating'' means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) ''Joint Strike Fighter'' means the next generation air combat strike aircraft developed and produced under the Joint Strike Fighter program.

(3) ''Joint Strike Fighter program'' means the multiservice, multinational project conducted by the United States government to develop and produce the next generation of air combat strike aircraft.

(4) ''Manufacturing'' means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate use in a Joint Strike Fighter. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(5) ''Primarily'' means tangible personal property used 50 percent or more of the time in an activity described in subparagraph (A) of paragraph (1) of 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, or fabricating activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, or fabricating 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, or fabricating activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, or fabricating activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, or fabricating process.

(7) ''Processing'' means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) ''Qualified activities'' means manufacturing, processing, or fabricating 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, or fabricating has altered tangible personal property to its completed form, including packaging, if required.

(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'' includes 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) 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, 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.

(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 a predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 2001, and before January 1, 2006, 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, 2001, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be

treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term ''purchase'' for the term ''construction, reconstruction, or acquisition.''

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the taxpayer first places the qualified property 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 taxpayer first places the qualified property 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 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 the seven succeeding years if necessary, until the credit is exhausted.

(i) (1) No credit shall be allowed under this section if a credit is claimed under Section 23649 in connection with the same property.

(2) No credit shall be allowed unless the credit is reflected within the bid upon which the qualified taxpayer's contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter is based by reducing the amount of the bid by the amount of the credit allowable.

(j) All references to the credit and ultimate cost reductions incorporated into any successful bid that was awarded a contract or subcontract and for which a qualified taxpayer is making a claim shall be made available to the Franchise Tax Board upon request.

(k) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

SEC. 85. Section 23642 of the Revenue and Taxation Code is amended to read:

23642. (a) For each taxable year beginning on or after January 1, 1996, there shall be allowed as a credit against the ''tax,'' as defined in Section 23036, the amount paid or incurred for eligible access expenditures. The credit shall be allowed in accordance with Section 44 of the Internal Revenue Code, relating to expenditures to provide access to disabled individuals, except that the credit amount specified in subdivision (b) shall be substituted for the credit amount specified in Section 44(a) of the Internal Revenue Code.

(b) The credit amount allowed under this section shall be 50 percent of so much of the eligible access expenditures for the taxable year as do not exceed two hundred fifty dollars ($250).

(c) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 86. Section 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each taxable 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 taxable 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 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 that 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 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 taxable 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 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 the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the ''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 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 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 ''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 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 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 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. 87. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each taxable year beginning on or after January 1, 1995, there shall be allowed as a credit against the ''tax'' (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However,

wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) ''LAMBRA'' means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(4) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) 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.

(II) 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 such a closure or layoff.

(III) 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.

(IV) 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.

(V) 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.

(VI) 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.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) 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) An individual who is 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) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) ''Qualified taxpayer'' means a corporation 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 as determined below in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the 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 qualified taxpayer that first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors ''2,000'' and ''12'' shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) ''Qualified displaced employee'' means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) ''LAMBRA expiration date'' means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, ''controlled group of corporations'' has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) ''More than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) (A) If the employment of any employee, other than seasonal employment, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is

removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined 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 individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) A mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second taxable year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the 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 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 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 ''tax'' for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 88. 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 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 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 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 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 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 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 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 ''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 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. 89. Section 23657 of the Revenue and Taxation Code is amended to read:

23657. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2002, there shall be allowed as a credit against the amount of ''tax,'' as defined in Section 23036, an amount equal to 20 percent of the amount of each qualified deposit made by a

taxpayer during the taxable year into a community development financial institution.

(b) 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 and Section 17053.57 shall not exceed ten million dollars ($10,000,000) for each calendar year.

(c) 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, amount of the deposit or equity investment, and the amount of credit to which the taxpayer is entitled, and retain a copy of the certification.

(4) Obtain the taxpayer's identification number, or in the case of an ''S corporation,'' the taxpayer identification numbers of all the shareholders 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 Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the California Organized Investment Network, or its successor, of the names and taxpayer 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.

(d) 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 (b). 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 taxable year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the Franchise Tax Board, in the form or manner agreed upon by the Franchise Tax Board and the California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified deposit made by each taxpayer, and the total amount of all qualified deposits.

(e) 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.

(f) (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 23036, for the taxable 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 23036, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(g) 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 taxable years, or until the credit has been exhausted, whichever occurs first.

(h) This section shall remain in effect only until December 1, 2002, and as of that date is repealed.

SEC. 90. Section 23666 of the Revenue and Taxation Code is amended to read:

23666. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2000, there shall be allowed, as determined by the Department of Fish and Game, a credit against the ''tax,'' as defined in Section 23036. The credit amount shall be equal to the lesser of 10 percent of the qualified costs paid or incurred by the taxpayer for salmon and steelhead trout habitat restoration and improvement projects or an amount determined in subparagraph (B) of paragraph (2) of subdivision (f). The credit allowed by this section shall be claimed on the return for the taxable year in which the expense for the habitat restoration or improvement project was paid or incurred.

(b) A taxpayer shall be eligible to claim the credit only after application to and certification by the Department of Fish and Game that all of the following conditions are met:

(1) The salmon or steelhead trout habitat restoration or improvement project meets the objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code) and would aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) The work to be undertaken is not otherwise required to be carried out pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative impacts to the environment caused by timber operations or required for mitigation of negative impacts on fish and wildlife habitat caused by a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) (1) Qualified costs are those costs paid or incurred by the taxpayer which are directly related to labor and materials which aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) Qualified costs do not include costs paid or incurred with respect to any of the following:

(A) Construction of office, storage, garage, or maintenance buildings.

(B) Drilling wells or installation of pumping equipment.

(C) Construction of permanent hatchery facilities, including raceways, water systems, or bird enclosures.

(D) Construction of permanent surface roadways or bridges.

(E) Any project requiring engineered design or certification by a registered engineer.

(3) Qualified costs shall be no greater than prevailing costs for similar work completed in the area where the project is proposed, and the project design and implementation shall follow the Department of Fish and Game guidelines.

(d) For purposes of computing the credit provided by this section, the cost of any salmon or steelhead trout habitat restoration or improvement project eligible for the credit shall be reduced by the amount of any grant or cost-share payment provided by a public entity for that project. The Department of Fish and Game shall certify the amount of funding, if any, provided by the Department of Fish and Game for the project.

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

(1) (A) Submit an application for the restoration tax credit with a description of the proposed project in a format acceptable to the Department of Fish and Game.

(B) The application for the restoration tax credit shall include all information that is required by the Department of Fish and Game, pursuant to subdivision (b), as well as, but not limited to, all of the following:

(i) A project description of the habitat restoration or improvement work to be accomplished, including the location of the project.

(ii) If other than the project applicant, the name of the owner of the land where the project is to be carried out.

(iii) The estimated qualified cost to accomplish the project, as well as the project's overall estimated cost.

(iv) A statement that a reasonable attempt will be made to hire unemployed persons previously employed in the commercial fishing or forest products industries for implementation of the project.

The tax identification number of each taxpayer allowed the credit.

(2) Obtain from the Department of Fish and Game certification that the project is approved, and the amount of credit allocation authorized, which shall not exceed the maximum amount of credit allocation set forth in subdivision (k).

(3) Notify the Department of Fish and Game in a form and manner specified by the department that the habitat restoration or improvement work was actually completed and the amount of qualified costs that were paid.

(4) Provide access, subject to prior notification by the Department of Fish and Game staff and permission by the taxpayer, to proposed project sites by the Department of Fish and Game staff for preproject and postproject evaluation, for project monitoring during all phases of implementation, and for verification that projects have been completed in accordance with department guidelines and recommendations. The Department of Fish and Game shall not include a project on its list of

approved projects eligible for the tax credit that is submitted to the Franchise Tax Board unless these conditions are met.

(5) Retain a copy of and make the certification referred to in paragraph (3) of subdivision (f) available to the Franchise Tax Board upon demand.

(6) Calculate the credit amount, equal to the lesser of 10 percent of the taxpayer's actual qualified costs or the amount of credit allocation authorized to the taxpayer, as determined by the Department of Fish and Game.

(f) The Department of Fish and Game shall do all of the following:

(1) Accept and review applications to determine if projects meet the conditions specified in subdivision (b).

(2) After all applications have been received for a calendar year, determine if 10 percent of the estimated costs for all approved projects exceeds the annual credit allocation. If the annual amount of credit allocation is exceeded, the amount of each taxpayer's credit allocation shall be calculated as follows:

(A) Divide the annual amount of credit allocation set forth in subdivision (j) by the total estimated qualified costs for all approved projects.

(B) Multiply each approved project's estimated qualified cost by the quotient of the calculation in subparagraph (A).

(C) If the annual amount of credit allocation is not exceeded, the amount of each credit allocation shall be 10 percent of the estimated qualified costs.

(3) Issue certificates to each taxpayer with an approved project that specifies the amount of credit allocated to the project.

(4) Provide an annual listing to the Franchise Tax Board (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the Department of Fish and Game) of the taxpayers who were issued the certification, their respective tax identification numbers, and the allowable amount of the credit allocated to each taxpayer.

(g) The Department of Fish and Game shall have the authority to establish annual timeframes for the receipt of applications.

(h) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(i) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, until the credit has been exhausted.

(j) For purposes of this section, the annual amount of credit allocation means the aggregate amount of tax credits which may be granted

pursuant to this section and Section 17053.66 shall not exceed five hundred thousand dollars ($500,000) per year. The Department of Fish and Game shall not authorize any credit which would cause the total amount of credits authorized with respect to any calendar year under this section and Section 17053.66 to exceed five hundred thousand dollars ($500,000).

(k) The maximum credit amount which the Department of Fish and Game may authorize with respect to any taxable year to any taxpayer is fifty thousand dollars ($50,000).

(*l*) In the case of a partnership, the credit limitation specified in subdivision (k) shall apply with respect to the partnership and with respect to each partner.

(m) This section shall remain in effect only until December 1, 2000, and as of that date is repealed.

SEC. 91. Section 23701a of the Revenue and Taxation Code is amended to read:

23701a. (a) Labor, agricultural, or horticultural organizations other than cooperative organizations described in Section 24404 or 24405 (unless the cooperative organization is determined by the Internal Revenue Service to be an organization described in Section 501(c)(5) of the Internal Revenue Code of 1954, as amended).

For purposes of this section, the term ''agricultural'' includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(b) The amendments to this section by the act adding this subdivision shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1983.

SEC. 92. Section 23701n of the Revenue and Taxation Code is amended to read:

23701n. (a) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(1) Under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(2) Such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Franchise Tax Board not to be discriminatory in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code, and

(3) Such benefits do not discriminate in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code. A plan shall not be considered

discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(b) In determining whether a plan meets the requirements of subdivision (a), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(1) Merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subdivision (a) are then reduced by any sick, accident, or unemployment compensation benefits received under state or federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(2) Merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under state or federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(3) Merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subdivision (a)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees were eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subdivision (a).

(c) A plan shall be considered to meet the requirements of subdivision (a) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(d) The term ''supplemental unemployment compensation benefits'' means only—

(1) Benefits which are paid to an employee because of his or her involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(2) Sick and accident benefits subordinate to the benefits described in paragraph (1).

(e) Exemption shall not be denied under this article to any organization entitled to such exemption as an association described in Section 23701i merely because such organization provides for the

payment of supplemental unemployment benefits (as defined in paragraph (1) of subdivision (d)).

SEC. 93. Section 23701s of the Revenue and Taxation Code is amended to read:

23701s. A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(a) Under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(b) Those benefits are payable to employees under a classification that is set forth in the plan and which is found by the Franchise Tax Board not to be discriminatory in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code, and

(c) Those benefits do not discriminate in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code. A plan shall not be considered discriminatory within the meaning of this paragraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(d) In the case of a plan under which an employee may designate certain contributions as deductible—

(1) Those contributions do not exceed the amount with respect to which a deduction is allowable under Section 219(b)(3) of the Internal Revenue Code,

(2) Requirements similar to the requirements of Section 401(k)(3)(A)(ii) of the Internal Revenue Code are met with respect to those elective contributions.

(3) Those contributions are treated as elective deferrals for purposes of Section 402(g) (other than paragraph (4) thereof) of the Internal Revenue Code, and

(4) The requirements of Section 401(a)(30) of the Internal Revenue Code are met.

SEC. 94. Section 23703 of the Revenue and Taxation Code is amended to read:

23703. (a) No exemption shall be allowed under this article to any charitable corporation as defined in Sections 12582.1 and 12583 of the Government Code for any year or years for which it fails to file with the Attorney General, on or before the due date, any registration or periodic

report required by Article 7 (commencing with Section 12580) of Chapter 6, Part 2, Division 3, Title 2, of the Government Code.

(b) The exemption shall be disallowed under this section only after the Attorney General has notified the Franchise Tax Board in writing that a charitable corporation subject to the provisions of subdivision (a) has failed to file any such registration or periodic report on or before the due date thereof.

(c) If an exemption is disallowed under this section, such exemption may be reinstated when the registration or periodic reports are filed; however, any such charitable corporation shall pay the minimum tax provided for by Section 23153 for any year or years for which its exemption was disallowed under this section.

(d) No exemption shall be disallowed under this section for taxable years commencing before January 1, 1962.

(e) The Franchise Tax Board may make any regulations which it deems necessary to effectuate the purposes of this section.

SEC. 95. Section 23704 of the Revenue and Taxation Code is amended to read:

23704. For purposes of this part, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if:

(a) The organization is organized and operated solely:

(1) To perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital that is an organization described in Section 23701d and exempt from taxation under Section 23701, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food, clinical, industrial engineering, laboratory, laundry, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(2) To perform those services solely for two or more hospitals, and for no other individuals or organizations, each of which is:

(A) An organization described in Section 23701d that is exempt from taxation under Section 23701, or

(B) A constituent part of an organization described in Section 23701d that is exempt from taxation under Section 23701 and that, if organized and operated as a separate entity, would constitute an organization described in Section 23701d, or

(C) Owned and operated by the United States, the state, a county, or political subdivision, or an agency or instrumentality of any of the foregoing.

(b) The organization is organized and operated on a cooperative basis and allocates or pays, within $8^1/_2$ months after the close of its taxable year, all net earnings to members on the basis of services performed for them.

(c) If the organization has capital stock, all of that stock outstanding is owned by its members.

For purposes of this part, any organization that, by reason of the preceding sentence, is an organization described in Section 23701d and exempt from taxation under Section 23701, shall be treated as a hospital and as an organization referred to in Section 23736(e).

SEC. 96. 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 taxable years beginning after December 31, 1970.

SEC. 97. Section 23735 of the Revenue and Taxation Code is amended to read:

23735. (a) Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b) Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to taxable years beginning on or after January 1, 1990, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.

(c) An interest in a participation agreement, as defined in subdivision (i) of Section 69980 of the Education Code, shall not be treated as debt.

SEC. 98. Section 23736.3 of the Revenue and Taxation Code is amended to read:

23736.3. An organization described in Section 23701n or Section 23701d, except as specified in Section 23736, shall be denied exemption under Section 23736.2 only for taxable years subsequent to the taxable years during which it is notified by the Franchise Tax Board that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such

transaction involved a substantial part of the corpus or income of such organization.

SEC. 99. Section 23736.4 of the Revenue and Taxation Code is amended to read:

23736.4. Any organization denied exemption under Section 23701d or Section 23701n by reason of the provisions of Section 23736.2 with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Franchise Tax Board, file claim for exemption, and if the Franchise Tax Board pursuant to such regulations, is satisfied that such organizations will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed.

SEC. 100. Section 23737 of the Revenue and Taxation Code is amended to read:

23737. In the case of any organization described in Section 23701d to which this article is applicable, exemption under Article 1 (commencing with Section 23701) shall be denied for the taxable year if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(a) Are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under Section 23701d; or

(b) Are used to a substantial degree for purposes or functions other than those constituting the basis for such organization's exemption under Section 23701d, or

(c) Are invested in such a manner as to jeopardize the carrying out of the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under Section 23701d.

SEC. 101. Section 23771 of the Revenue and Taxation Code is amended to read:

23771. (a) Except as provided in subdivision (b), every organization, otherwise exempt under Article 1 (commencing with Section 23701), but having income of the character described in Article 2 (commencing with Section 23731), shall file a return, verified by an executive officer under penalty of perjury in the form prescribed by the Franchise Tax Board, on or before the 15th day of the fifth month following the close of the taxable year, reporting its income from those activities and shall pay a tax as required by Section 23731 on its unrelated business taxable income as defined in Section 23732.

(b) An education IRA described in Section 23712 shall file a return described in subdivision (a) on or before the 15th day of the fourth month following the close of the taxable year.

SEC. 102. Section 23772 of the Revenue and Taxation Code is amended to read:

23772. (a) For the purposes of this part—

(1) Except as provided in paragraph (2) every organization exempt from taxation under Section 23701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.

(2) Exceptions from filing—

(A) Mandatory exceptions—Paragraph (1) shall not apply to—

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 23709), the gross receipts of which in each taxable year are normally not more than twenty-five thousand dollars ($25,000), or

(iii) The exclusively religious activities of any religious order,

(B) Discretionary exceptions—The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars ($10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before such due date unless it is shown that such failure is due to reasonable cause, the filing fee shall be twenty-five dollars ($25). All collection remedies provided in Article 5 (commencing with Section 18661) of Chapter 2 of Part 10.2 shall be applicable to collection of the filing fee. However, the filing fee shall not apply to the organization described in paragraph (4).

(4) Paragraph (3) shall not apply to: (A) a religious organization exempt under Section 23701d; (B) an educational organization exempt under Section 23701d, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of

pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if such organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 23701d, if such organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 23701d which is subject to the requirements of subdivision (a) shall furnish annually information, at such time and in such manner as the Franchise Tax Board may by rules or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements within the year for the purposes for which it is exempt,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees,

(7) The compensation and other payments made during the year to each individual described in paragraph (6),

(8) In the case of an organization with respect to which an election under Section 23704.5 is effective for the taxable year, the following amounts for such organization for such taxable year:

(A) The lobbying expenditures (as defined in Section 23740(c)(1)).

(B) The lobbying nontaxable amount (as defined in Section 23740(c)(2)).

(C) The grassroots expenditures (as defined in Section 23740(c)(3)).

(D) The grassroots nontaxable amount (as defined in Section 23740(c)(4)). For purposes of this paragraph, if Section 23740(f) applies to the organization for the taxable year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 23701a to 23701w, inclusive (other than Sections 23701d, 23701k, and 23701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense, and

(10) Any other relevant information as the Franchise Tax Board may prescribe.

(c) In addition to the above annual return any organization which is required to file an annual report under Section 6056 of the Internal Revenue Code will furnish a copy of the report to the Franchise Tax Board at the time the annual return is due.

(d) For the purposes of this part—

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the exempt organization or trust failing so to file, five dollars ($5) for each month or part thereof during which such failure continues, but the total amount imposed hereunder on any organization for failure to file any return shall not exceed forty dollars ($40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision or subdivision (c) specifying therein a reasonable future date by which such filing shall be made, and if such filing is not made on or before such date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars ($5) each month or part thereof after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed hereunder on all persons for such failure to file shall not exceed twenty-five dollars ($25). If more than one person is liable under this paragraph for a failure to file, all such persons shall be jointly and severally liable with respect to such failure. The term ''person'' as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(e) The reporting requirements and penalties shall be applicable for taxable years beginning after December 31, 1970, except that the provisions of subparagraph (B) of paragraph (2) of subdivision (a) shall apply to taxable years ending after December 31, 1970.

SEC. 103. Section 23774 of the Revenue and Taxation Code is amended to read:

23774. (a) Except as provided in subdivision (b), every organization exempt from filing an annual information return by reason of subdivision (a) of Section 23772, may be required to file an annual

statement on or before the 15th day of the fifth calendar month following the close of the taxable year setting forth in the manner as may be required by the Franchise Tax Board the following information: the name and address of the organization, its major activities, its sources of income, and the section of the Internal Revenue Code under which it is exempt. Organizations other than those described in clause (i) and (iii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 23772 may also be required by the Franchise Tax Board to furnish information with respect to their gross receipts and their assets.

(b) Every religious organization exempt from filing an annual information return by reason of subdivision (a) of Section 23772, which because of sincerely held religious convictions refuses to file an annual statement as prescribed in subdivision (a), may submit in lieu thereof a notarized statement on its organizational letterhead containing the following information: the name and address of the organization, its major activities, its sources of income, and the section of the Internal Revenue Code under which it is exempt. That information shall be for the sole purpose of verifying the absence of unrelated business income of the organization. The statement shall be submitted on or before the 15th day of the fifth calendar month following the close of the taxable year.

SEC. 104. Section 23775 of the Revenue and Taxation Code is amended to read:

23775. Except for purposes of amending the articles of incorporation to set forth a new name, under regulations prescribed by the Franchise Tax Board, the corporate powers, rights and privileges of an exempt domestic corporation may be suspended and the exercise of the corporate powers, rights and privileges of a foreign exempt corporation in this state may be forfeited if the organization fails to file the annual return or statement required under Section 23772 or 23774, or pay any amount due under Section 23703 or 23772 on or before the last day of the 12th month following the close of the taxable year.

SEC. 105. 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 taxable 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. 106. Section 23800 of the Revenue and Taxation Code is amended to read:

23800. (a) For any taxable year beginning on or after January 1, 1987, Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to the tax treatment of ''S corporations'' and their shareholders, shall apply, except as otherwise provided.

(b) For taxable years beginning in 1987 and 1988, reasonable extensions of time may be granted, as appropriate for implementation of this chapter, in the form and the manner as the Franchise Tax Board may prescribe.

SEC. 107. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an ''S corporation'' unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For taxable years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the taxable year beginning in 1987, shall be deemed to have elected to be treated as an ''S corporation'' for purposes of this part, unless that corporation elects on its return to continue to be treated as a ''C corporation'' for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a ''C corporation'' for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an ''S corporation'' under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an ''S corporation'' on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For taxable years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the preceding year, but was a ''C corporation'' for purposes of this part for that preceding year, may elect to be treated as an ''S corporation'' for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for the taxable year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an ''S corporation'' for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a ''C corporation'' for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a ''C corporation'' for purposes of this part in a form and manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an ''S corporation'' under subparagraph (A) for a taxable year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an ''S corporation'' on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For taxable years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for a taxable year beginning on or after January 1, 1990, shall be an election to which subdivision (e) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a ''C corporation'' for purposes of this part.

(i) The federal ''S'' election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that taxable year.

(ii) The California election to be a ''C corporation'' may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal ''S'' election under Section 1362(a) of the Internal Revenue Code for that taxable year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a ''C corporation'' for purposes of this part, may elect to be treated as an ''S corporation'' by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an ''S'' election under Section 1362(a) of the Internal Revenue Code for that taxable year,

unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an ''S corporation'' for the taxable year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a ''C corporation'' for that taxable year.

(i) The federal ''S'' election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a ''C corporation'' shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For a taxable year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For a taxable year beginning on or after January 1, 1991, the last date allowed for filing a federal ''S'' election under Section 1362(a) of the Internal Revenue Code for that taxable year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an ''S corporation'' for federal purposes, shall be treated as an ''S corporation'' for purposes of this part, and its shareholders shall be treated as shareholders of an ''S corporation.''

(ii) If a corporation described in clause (i) elected to be treated as a ''C corporation'' under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for taxable years beginning on or after January 1, 1990. The corporation shall be treated as an ''S corporation'' for purposes of this part, and its shareholders shall be treated as shareholders of an ''S corporation.''

(E) For purposes of this section, ''qualified to do business in California'' or ''qualifying to do business in California'' means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a ''C corporation'' shall be treated as a revocation and Section 1362(g) of the Internal Revenue Code, relating to election after termination, shall apply.

(ii) An untimely election to be treated as a ''C corporation'' shall be null and void and shall not be applied to either the current or any subsequent taxable year.

(5) For taxable years beginning on or after January 1, 1997, the provisions of paragraph (4) shall apply, subject to the following modifications:

(A) A corporation that elects ''S corporation'' status under Section 1362 of the Internal Revenue Code for federal purposes but which is not qualified to be an ''S corporation'' under subdivision (a) of Section 23800.5, shall not be an ''S corporation'' for purposes of Part 10 (commencing with Section 17001) and this part.

(B) (i) A corporation that becomes an ''S corporation'' for a taxable year beginning before January 1, 1997, under the provisions of Section 1305 of the Small Business Job Protection Act of 1996 (P.L. 104-188) for federal purposes, shall become an ''S corporation'' for purposes of Part 10 (commencing with Section 17001) and this part, for its first taxable year beginning on or after January 1, 1997, unless a timely election to continue as a ''C corporation'' is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first taxable year beginning on or after January 1, 1997.

(C) (i) A corporation that makes a valid federal election to be an ''S corporation'' during the period in 1997 before the date of enactment of the act adding this paragraph and which would not qualify to be an ''S corporation'' under this part on the date of the federal election shall become an ''S corporation'' for purposes of Part 10 (commencing with Section 17001) and this part, for its first taxable year beginning on or after January 1, 1997, unless a timely election to continue as a ''C corporation'' is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first taxable year beginning on or after January 1, 1997.

(b) If a corporation subject to tax under this part elects to be treated as an ''S corporation'' and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An ''S corporation'' shall include in its return for each taxable year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation by the Franchise Tax Board of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an ''S corporation'' for purposes of this part shall not be included in a combined report pursuant to Chapter 17 (commencing with Section 25101).

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an ''S corporation'' under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an ''S corporation.''

(e) The tax for a ''C corporation'' for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e)(5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the ''S corporation'' election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid ''S'' election under Section 1362(a) of the Internal Revenue Code, may revoke its ''S'' election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For taxable years beginning on or after January 1, 1990, if a corporation, which has in effect a valid ''S'' election under Section 1362(a) of the Internal Revenue Code, fails to make a ''C corporation'' election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an ''S corporation'' pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

(h) For taxable years beginning on or after January 1, 1997, for purposes of subparagraph (F) of paragraph (4) of subdivision (a) of this section and Section 1362(g) of the Internal Revenue Code, relating to election after termination, any termination under Section 1362(d) of the Internal Revenue Code or election to be treated as a ''C corporation'' under subparagraph (A) or (C) of paragraph (4) of subdivision (a), or to terminate by revocation under paragraph (3) of subdivision (f) in a taxable year beginning before January 1, 1997, shall not be taken into account.

(i) (1) The provisions of Section 1362(b)(5) of the Internal Revenue Code, relating to authority to treat late elections, etc., as timely, shall apply only for taxable years beginning on or after January 1, 1997, with respect to elections under Section 1362(a) of the Internal Revenue Code for taxable years beginning on or after January 1, 1997.

(2) Notwithstanding the provisions of paragraph (1), if for any taxable year beginning on or after January 1, 1987, a corporation fails to qualify as an ''S corporation'' for federal income tax purposes solely because the federal Form 2553 (Election by a Small Business Corporation) was not filed timely, the corporation shall be treated for purposes of this part as an ''S corporation'' for the taxable year the ''S corporation'' election should have been made, and for each subsequent year until terminated, if both of the following conditions are met:

(A) The corporation and all of its shareholders reported their income for California tax purposes on original returns consistent with ''S corporation'' status for the year the ''S corporation'' election should have been made, and for each subsequent taxable year (if any) until terminated.

(B) The corporation and its shareholders have filed with the Internal Revenue Service a federal Form 2553 requesting automatic relief with respect to the late ''S corporation'' election, in full compliance with the federal Revenue Procedure 1997-48, I.R.B. 1997-43, and have received notification of the acceptance of the untimely filed ''S corporation'' election from the Internal Revenue Service. A copy of the notification shall be provided to the Franchise Tax Board upon request.

(j) The provisions of Section 1362(f) of the Internal Revenue Code, relating to inadvertent invalid elections or terminations, shall apply only for taxable years beginning on or after January 1, 1997, with respect to

elections under Section 1362(a) of the Internal Revenue Code for taxable years beginning on or after January 1, 1997.

SEC. 108. Section 23802.5 of the Revenue and Taxation Code is amended to read:

23802.5. (a) For taxable years beginning on or after January 1, 1997, Section 1366(a)(1) of the Internal Revenue Code, relating to determination of shareholder's tax liability, is modified to apply to the final taxable year of a trust or estate which terminates before the end of the corporation's taxable year.

(b) For taxable years beginning on or after January 1, 1997, Section 1366(d)(1)(A) of the Internal Revenue Code, relating to losses and deductions that cannot exceed shareholder's basis in stock and debt, is modified to additionally provide that the adjusted basis of a shareholder's stock in the S corporation is to be decreased by distributions by the corporation that were not includable in the income of the shareholder by reason of Section 1368 of the Internal Revenue Code.

(c) For taxable years beginning on or after January 1, 1997, Section 1366(d)(3) of the Internal Revenue Code, relating to carryover of disallowed losses and deductions to post-termination transition period, is modified to provide that to the extent that any increase in adjusted basis described in Section 1366(d)(3)(B) of the Internal Revenue Code would have increased the shareholder's amount at risk under Section 465 if the increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in Section 1366(d)(3)(A) to (C), inclusive, of the Internal Revenue Code shall apply to any losses disallowed by reason of Section 465(a) of the Internal Revenue Code.

SEC. 109. Section 23803 of the Revenue and Taxation Code is amended to read:

23803. (a) (1) With respect to credits which are otherwise allowed to reduce the taxes imposed under this part:

(A) The amount of any credit to be claimed shall be limited to one-third of the amount otherwise allowable.

(B) (i) Any unused portion of the credit allowable under subparagraph (A) (one-third of the total credit) shall be allowed to be carried forward and shall not be subject to additional reductions under subparagraph (A) in later years.

(ii) No carryforward shall be allowed for the portion of the credit denied under subparagraph (A) (two-thirds of the total credit).

(C) Credits carried forward from taxable years beginning prior to the first taxable year in which the corporation is treated as an ''S corporation'' under this part, shall be reduced in accordance with

subparagraph (A) for that first taxable year and shall not be subject to additional reductions under subparagraph (A) in later years.

(D) The provisions of paragraphs (2) and (3) of subdivision (f) of Section 23802 shall be applied prior to the reduction required by subparagraph (A).

(E) No portion of any credit to which this paragraph applies shall be passed through to the shareholders of the ''S corporation.''

(F) The provisions of this paragraph shall not affect the amount of any credit computed under Part 10 (commencing with Section 17001) for pass through to shareholders in accordance with the provisions of Section 1366 of the Internal Revenue Code.

(2) With respect to credits which are allowed to the ''S corporation'' only because it is treated in the same manner as an individual, the provisions of Section 1366(a) of the Internal Revenue Code shall be modified to provide that the shareholder's pro rata share of the corporation's credits shall include the credit for political contributions allowed under Section 17053.14.

(b) Section 1366(f) of the Internal Revenue Code, relating to special rules, shall be modified as follows:

(1) The amount of tax used to compute the reduction allowed by Section 1366(f)(2) shall be the amount of tax imposed on built-in gains under this part.

(2) The amount of tax used to compute the reduction allowed by Section 1366(f)(3) shall be the amount of tax imposed on excess net passive income under this part.

SEC. 110. Section 23804.5 of the Revenue and Taxation Code is amended to read:

23804.5. For taxable years beginning on or after January 1, 1997:

(a) Section 1368(d) of the Internal Revenue Code, relating to certain adjustments taken into account, is modified to provide that in the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in Section 1367(a)(1) of the Internal Revenue Code.

(b) Section 1368(e)(1) of the Internal Revenue Code, relating to accumulated adjustments account, is modified to provide as follows:

(1) In applying Section 1368 of the Internal Revenue Code to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of the taxable year shall be determined without regard to any net negative adjustment for that taxable year.

(2) For purposes of paragraph (1), the term ''net negative adjustment'' means, with respect to any taxable year, the excess, if any, of the reduction in the account for the taxable year, other than for distributions, over the increase in that account for that taxable year.

(3) Section 1368(e)(1)(A) of the Internal Revenue Code shall be modified to take into account the provisions of this subdivision.

(4) Section 1368(e)(1)(A) of the Internal Revenue Code shall be modified to refer to Section 1367(a)(2) of the Internal Revenue Code in lieu of Section 1367(b)(2)(A) of the Internal Revenue Code.

SEC. 111. Section 23806 of the Revenue and Taxation Code is amended to read:

23806. (a) Section 1371(a) of the Internal Revenue Code, relating to application of Subchapter C rules, is modified to provide that, notwithstanding subdivisions (a) and (e) of Sections 17024.5 and 23051.5, any election by an ''S corporation'' or its shareholders under Section 338 of the Internal Revenue Code, relating to certain stock purchases treated as asset acquisitions, for federal purposes shall be treated as an election for purposes of this part and a separate election under paragraph (3) of subdivision (e) of Section 17024.5 or 23051.5 shall not be allowed.

(b) No election under Section 338 of the Internal Revenue Code, relating to certain stock purchases treated as asset acquisitions, shall be allowed for state purposes unless the ''S corporation'' or its shareholders made a valid election for federal purposes under Section 338 of the Internal Revenue Code.

(c) Section 1371 (d) of the Internal Revenue Code shall not apply.

(d) (1) Subdivisions (a) and (b) shall apply to any transaction occurring on or after January 1, 1998, in a taxable year beginning on or after January 1, 1997.

(2) Subdivision (c) shall apply to taxable years beginning on or after January 1, 1997.

SEC. 112. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section.

(a) The tax imposed under this section shall not be imposed on an ''S corporation'' that has no excess net passive income for federal purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b) (1) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an ''S corporation'' which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) The provisions of Section 1375(c)(1) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(d) The term "subchapter C earnings and profits" as used in Sections 1362(d)(3) and 1375 of the Internal Revenue Code shall mean the subchapter C earnings and profits of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e) (1) In the case of a corporation which elects to be treated as an "S corporation" for purposes of this part for its first taxable year beginning in 1987, or for its first taxable year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation's subchapter C earnings and profits at the close of any taxable year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that taxable year.

(2) In the event there is a determination that a corporation described in paragraph (1) has subchapter C earnings and profits at the close of any taxable year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend shall not exceed the difference between the corporation's subchapter C earnings and profits determined under subdivision (d) at the close of the taxable year with respect to which the determination is made and the corporation's subchapter C earnings and profits for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has subchapter C earnings and profits. For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code for any consent dividend.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 113. Section 24273 of the Revenue and Taxation Code is amended to read:

24273. (a) Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Franchise Tax Board a change to a different method is authorized.

SEC. 114. Section 24273.5 of the Revenue and Taxation Code is amended to read:

24273.5. (a) Noncash patronage allocations from farmers' cooperative and mutual associations (whether paid in capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or in some other manner that discloses the dollar amount of such noncash patronage allocations) may, at the election of the taxpayer, be considered as income and included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subdivision (a), the amount included in gross income shall be the face amount of such allocations.

(c) If a taxpayer elects to exclude noncash patronage allocations from gross income for the taxable year in which received, such allocations shall be included in gross income in the year that they are redeemed or realized upon.

(d) If a taxpayer exercises the election provided for in subdivision (c), the face amount of such noncash patronage allocations shall be disclosed in the return made for the taxable year in which such noncash patronage allocations were received.

(e) If a taxpayer exercises the election provided for in subdivision (a) or (c) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Franchise Tax Board a change to a different method is authorized.

(f) If a taxpayer has made the election provided for in subdivision (c), then (1) the statutory period for the assessment of a deficiency for any taxable year in which the amount of any noncash patronage allocations

are realized shall not expire prior to the expiration of four years from the date the Franchise Tax Board is notified by the taxpayer (in any manner as the Franchise Tax Board may by regulation prescribe) of the realization of gain on such allocations; and (2) that deficiency may be assessed prior to the expiration of the four-year period, notwithstanding the provisions of Section 19057 or the provisions of any other law or rule of law which would otherwise prevent such assessment.

SEC. 115. Section 24275 of the Revenue and Taxation Code is amended to read:

24275. In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includable in the gross income of that taxpayer the amount so included for any taxable year.

SEC. 116. Section 24276 of the Revenue and Taxation Code is amended to read:

24276. Section 90 of the Internal Revenue Code, relating to illegal federal irrigation subsidies, shall apply to water delivered to the taxpayer on or after January 1, 1988, in taxable years beginning on or after January 1, 1989, except as otherwise provided.

SEC. 117. 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 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 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

SEC. 118. Section 24307 of the Revenue and Taxation Code is amended to read:

24307. (a) Section 108 of the Internal Revenue Code, relating to income from discharge of indebtedness, shall apply, except as otherwise provided.

(b) 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).''

(c) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(d) 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.

(e) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting ''$9'' in lieu of ''$3.''

(f) (1) The amendments to Section 108 of the Internal Revenue Code made by Section 13150 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to exclusion from gross income for income from discharge of qualified real property business indebtedness, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

(2) 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 23051.5 and the federal election shall be binding for purposes of this part.

(3) 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.

(g) The amendments to Section 108 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 119. Section 24308 of the Revenue and Taxation Code is amended to read:

24308. Section 1078 of Public Law 98-369 (Tax Reform Act of 1984), relating to exclusions from gross income of payments from the United States Forest Service as a result of restricting motorized traffic in the Boundary Waters Canoe Area, shall apply, with the following exceptions:

(a) Section 1078(f)(2) of that act shall not be applicable.

(b) This section shall be effective only for payments made in taxable years beginning on or after January 1, 1985.

SEC. 120. Section 24322 of the Revenue and Taxation Code is amended to read:

24322. (a) Gross income of a domestic building and loan association, as defined in Section 7701(a)(19) of the Internal Revenue Code, does not include any amount of money or other property received

from the Federal Savings and Loan Insurance Corporation pursuant to Section 406(f) of the National Housing Act (12 U.S.C. Section 1729(f)), regardless of whether any note or other instrument is issued in exchange therefor.

(b) No reduction in the basis of assets of a domestic building and loan association shall be made on account of money or other property received under the circumstances referred to in subdivision (a).

(c) Section 24425 shall not deny any deductions by reason of the deductions being allocable to amounts excluded from gross income under this section.

(d) This section shall not apply with respect to any amounts excludable under subdivision (a) received after December 31, 1988, in taxable years ending after that date, unless the payments are made by the Federal Savings and Loan Insurance Corporation pursuant to an acquisition or merger which occurred on or before December 31, 1988.

SEC. 121. Section 24324 of the Revenue and Taxation Code is amended to read:

24324. (a) Gross income does not include any contribution to the capital of the taxpayer.

(b) (1) For purposes of this section, ''contribution to the capital of the taxpayer'' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides electric energy, gas (through a local distribution system or transportation by pipeline), water, or sewerage disposal services if all of the following apply:

(A) The amount is contribution in aid of construction.

(B) Where the contribution is in property that is other than electric energy, gas steam, water, or sewerage disposal facilities, the amount meets the requirements of the expenditure rule of paragraph (2).

(C) The amounts (or any property acquired or constructed with those amounts) are not included in the taxpayer's rate base for ratemaking purposes.

(2) An amount meets the requirements of this paragraph if all of the following apply:

(A) An amount equal to that amount is expended for the acquisition or construction of tangible property described in Section 1231(b) of the Internal Revenue Code and both of the following apply:

(i) The expenditure was the purpose motivating the contribution.

(ii) The property is used predominantly in the trade or business of furnishing electric energy, gas, steam, water, or sewerage disposal services.

(B) The expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the taxable year in which that amount was received.

(C) Accurate records are kept of the amount contributed and expenditures made on the basis of the project for which the contribution was made and on the basis of the year of contribution or expenditure.

(3) For purposes of this section:

(A) ''Contribution in aid of construction'' does not include amounts paid as customer connection fees (including amounts paid to connect the customer's line to an electric line, a gas main, a steam line, or a main water or sewer line) and amounts paid as service charges for starting or stopping services.

(B) ''Contribution in aid of construction'' includes amounts received by a regulated public utility from a contributor to recover the federal tax imposed upon contributions in aid of construction, provided that the method used to recover the tax is authorized by Public Utilities Commission Decision 87-09-026.

(C) ''Predominantly'' means 80 percent or more.

(D) ''Regulated public utility'' means a regulated public utility as defined by Section 7701(a)(33) of the Internal Revenue Code, except that it does not include any utility which is not required to provide electric energy, gas, water, or sewerage disposal services to members of the general public (including, in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public) in its service area.

(4) Notwithstanding any other provision of this part, no deduction or credit shall be allowed for, or by reason of, the expenditure which constitutes a contribution in aid of construction to which this section applies. The adjusted basis of any property acquired with contributions in aid of construction to which this section applies shall be zero.

(c) This section shall apply to contributions in aid of construction made on or after January 1, 1977, and before January 1, 1992.

SEC. 122. Section 24343.3 of the Revenue and Taxation Code is amended to read:

24343.3. Any employer contribution to a medical savings account, as defined in Section 220 of the Internal Revenue Code, relating to medical savings accounts, if otherwise deductible under this part, shall be allowed only for the taxable year in which paid.

SEC. 123. Section 24343.5 of the Revenue and Taxation Code is amended to read:

24343.5. (a) In addition to the deduction allowed by Section 24343, a deduction shall be allowed to an employer as an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business for those expenses involved in any of the following ridesharing arrangements:

(1) Subsidizing employees commuting in vanpools.

(2) Subsidizing employees commuting in private commuter buses or buspools.

(3) Subsidizing monthly transit passes for its employees or for use by the employee's dependents, except that no deduction shall be allowed for transit passes issued for the use of elementary and secondary school students.

(4) Subsidizing employees commuting in subscription taxipools.

(5) Subsidizing employees commuting in a carpool.

(6) In the case of an employer who offers free parking to its employees, offering a cash equivalent to employees who do not require parking, including a parking cash-out program, as defined by subdivision (f) of Section 65088.1 of the Government Code.

(7) Providing free or preferential parking to carpools, vanpools, or any other vehicle used in a ridesharing arrangement.

(8) Making facility improvements to encourage employees, for the purpose of commuting from their homes, to participate in ridesharing arrangements, to use bicycles, or to walk. These facility improvements may include, but are not limited to, any of the following: the construction of bus shelters; the installation of bicycle racks and other bicycle-related facilities, such as showers and locker rooms; and parking lot modifications to provide carpools, vanpools, or buspools with preferential treatment. The cost of these facility improvements shall be allowed as a depreciation deduction. Notwithstanding subdivision (c), the depreciation deduction shall be allowable over a 36-month period.

(9) Providing company commuter van or bus service to its employees and to others for commuting from their homes, but not for transportation required as part of the employer's business activities, except as otherwise provided in this section. The capital costs of providing this service shall not be an eligible deduction under this section.

(10) Providing to employees transportation services which are required as part of the employer's business activities to the extent that the transportation would be provided by employees without reimbursement in the absence of an employer-sponsored ridesharing incentive program. The capital costs of providing this service shall not be an eligible deduction under this section.

(b) For purposes of this section:

(1) ''Employer'' means either of the following:

(A) A taxpayer for whom services are performed by employees, except entities which are not subject to tax under this part.

(B) A taxpayer which is a private or public educational institution which enrolls students at higher than the secondary level.

(2) ''Employee'' means either of the following:

(A) An individual who performs service for an employer for more than eight hours per week for remuneration.

(B) Any commuting student, as defined in paragraph (3).

(3) ''Commuting student'' means a registered full-time student at a college, university, or other postsecondary educational institution, who lives apart from the property which is designated as the ''employment site'' for the purpose of this section, and who travels between his or her residence and the designated employment site on a regular, though not necessarily daily, basis.

(4) ''Employer-sponsored ridesharing incentive program'' means a program undertaken by an employer either alone or in cooperation with other employers to encourage or provide, or both, fiscal other incentives to employees to make the home-to-work commute trip by any mode other than the single-occupant motor vehicle.

(5) ''Company commuter bus or van'' means a highway vehicle which meets all of the following criteria:

(A) Has at least seven or more persons commuting on a daily basis to and from work.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this legislation.

(6) ''Vanpool'' means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adult persons.

(7) ''Monthly transit pass'' means any bulk purchase of transit rides that entitles the purchaser to 40 or more rides per month, whether at a discount rate or the base fare rate.

(8) ''Transit'' means transportation service for use by the general public that utilizes buses, railcars, or ferries with a seating capacity of 16 or more persons.

(9) ''Subscription taxipool'' means a type of service in which employers or groups of employees contract with a public or private taxi operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily-fare basis, following a relatively fixed route and schedule tailored to meet the needs of the subscribers.

(10) ''Ridesharing arrangement'' means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

(11) ''Carpool'' means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry less than seven adults, including the driver.

(12) ''Buspool'' means 16 or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry more than 15 adult passengers.

(13) ''Private commuter bus'' means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section.

(D) With respect to which the taxpayer makes an election under this paragraph on its return for the taxable year in which the vehicle is placed in service.

SEC. 124. Section 24343.7 of the Revenue and Taxation Code is amended to read:

24343.7. (a) Section 162(e) of the Internal Revenue Code, relating to the denial of deduction for certain lobbying and political expenditures, shall not apply.

(b) (1) The deduction allowed by Section 162(a) of the Internal Revenue Code, relating to trade or business expenses, shall include all the ordinary and necessary expenses, including, but not limited to, traveling expenses described in Section 162(a)(2) of the Internal Revenue Code and the cost of preparing testimony, paid or incurred during the taxable year in carrying on any trade or business for any of the following:

(A) In direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a state, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer.

(B) In direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to that organization.

(C) That portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by that organization.

(2) Paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred, whether by way of contribution, gift, or otherwise, with respect to either of the following:

(A) For participation in, or intervention in, any political campaign on behalf of any candidate for public office.

(B) In connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(c) Section 162(m) of the Internal Revenue Code, relating to certain excessive employee remuneration, shall not apply.

(d) Section 162(k)(2)(A)(ii) of the Internal Revenue Code shall not apply.

SEC. 125. Section 24344 of the Revenue and Taxation Code is amended to read:

24344. (a) Section 163 of the Internal Revenue Code, relating to interest, shall apply, except as otherwise provided.

(b) If income of the taxpayer which is derived from or attributable to sources within this state is determined pursuant to Section 25101 or 25110, the interest deductible shall be an amount equal to interest income subject to apportionment by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula.

(c) (1) Notwithstanding subdivision (b) and subject to paragraph (2), interest expense allowable under Section 163 of the Internal Revenue Code that is incurred for purposes of foreign investments may be offset against dividends deductible under Section 24411.

(2) For taxable years beginning on or after January 1, 1997, the amount of interest computed pursuant to paragraph (1) shall be multiplied by the same percentage used to determine the dividend deduction under Section 24411 to determine that amount of interest that may be offset as provided in paragraph (1).

(d) Section 7210(b) of Public Law 101-239, relating to the effective date for limitation on deduction for certain interest paid to a related person, shall apply.

(e) Section 163(j)(6)(C) of the Internal Revenue Code, relating to treatment of an affiliated group, is modified to apply to all members of a combined report filed under Section 25101.

SEC. 126. Section 24344.5 of the Revenue and Taxation Code is amended to read:

24344.5. (a) A deduction, determined in accordance with Section 163(e) of the Internal Revenue Code, shall be allowed to the issuer of an original issue discount bond.

(b) For taxable years beginning on or after January 1, 1987, and before the taxable year in which the debt obligation matures or is sold, exchanged, or otherwise disposed, the amount deductible under this part shall be the same as the amount deductible on the federal tax return.

(c) The difference between the amount deductible on the federal tax return and the amount allowable under this part, with respect to obligations issued after December 31, 1984, for taxable years beginning before January 1, 1987, shall be allowed as a deduction in the taxable year in which the debt obligation matures or is sold, exchanged, or otherwise disposed.

(d) The provisions of Section 7202(c) of Public Law 101-239, relating to the effective date for treatment of certain high yield original issue discount obligations, shall apply.

SEC. 127. Section 24344.7 of the Revenue and Taxation Code is amended to read:

24344.7. The amendments to Section 163 of the Internal Revenue Code made by Section 13228 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modification to limitation on deduction for certain interest, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 128. Section 24345 of the Revenue and Taxation Code is amended to read:

24345. A deduction shall be allowed for taxes or licenses paid or accrued during the taxable year, except:

(a) Taxes paid to the state under this part.

(b) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of any of the following:

(1) The Government of the United States or any foreign country.

(2) Any state, territory, county, school district, municipality, or other taxing subdivision of any state or territory.

(c) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this does not exclude the allowance as a deduction of so much of the taxes assessed against local benefits as is properly allocable to maintenance or interest charges. Nor does this exclude the allowance of any irrigation or other water district taxes or assessments which are levied for the payment of the principal of any improvement or other bonds for which a general assessment on all lands within the district is levied as distinguished from a special assessment levied on part of the area within the district.

(d) Federal stamp taxes (not described in subdivision (b) or (c)); but this subdivision shall not prevent such taxes from being deducted under Section 24343 (relating to trade or business expenses).

(e) State and local general sales or use taxes. However, there shall be allowed as a deduction, state and local sales or use taxes which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in Section 212 of the Internal Revenue Code (relating to expenses for production of income). Notwithstanding the preceding sentence, any sales or use tax (except where a tax credit is claimed under Section 23612.2) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(f) For purposes of subdivision (b), ''taxes on or according to or measure by income'' shall include any taxes imposed on a dividend that is eliminated from the income of the recipient under Section 25106.

SEC. 129. Section 24346 of the Revenue and Taxation Code is amended to read:

24346. (a) For purposes of subdivision (a) of Section 24345, if real property is sold during any real property tax year, then—

(1) So much of the real property tax as is properly allocable to that part of the year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller; and

(2) So much of that tax as is properly allocable to that part of the year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(b) (1) In the case of any sale of real property; if—

(A) A corporation may not, by reason of its method of accounting, deduct any amount for taxes unless paid; and

(B) The other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year;

then for purposes of subdivision (a) of Section 24345 the corporation shall be treated as having paid, on the date of the sale, so much of the tax as, under subdivision (a), is treated as imposed on the corporation. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(2) Subdivision (a) shall apply to taxable years beginning after December 31, 1960, but only in the case of sales after December 31, 1960.

(3) Subdivision (a) shall not apply to any real property tax, to the extent that the tax was allowable as a deduction under the Bank and

Corporation Tax Law of 1954 to the seller for a taxable year which began before January 1, 1961.

(4) In the case of any sale of real property, if the corporation's net income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under subdivision (b) of Section 24681 (relating to the accrual of real property taxes) applies, then, for purposes of subdivision (a) of Section 24345, that portion of the tax that—

(A) Is treated, under subdivision (a), as imposed on the corporation; and

(B) May not, by reason of the corporation's method of accounting, be deducted by the corporation for any taxable year, shall be treated as having accrued on the date of the sale.

SEC. 130. Section 24347 of the Revenue and Taxation Code is amended to read:

24347. For taxable years beginning on or after January 1, 1990, all of the following shall apply:

(a) Section 165 of the Internal Revenue Code, relating to losses.

(b) Section 166 of the Internal Revenue Code, relating to bad debts, except that the deduction of a savings and loan association, bank or financial corporation shall be determined under Section 24348.

(c) (1) Section 582 of the Internal Revenue Code, relating to bad debts, losses, and gains with respect to securities held by financial institutions.

(2) Section 582(c)(2)(C) of the Internal Revenue Code, relating to limitations on foreign banks, but only to foreign corporations that have in effect for the taxable year a water's edge election under Section 25110.

SEC. 131. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) ''Excess disaster loss'' means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), (17), (18), (19), and (20) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 132. Section 24348 of the Revenue and Taxation Code is amended to read:

24348. (a) (1) There shall be allowed as a deduction either of the following:

(A) Debts which become worthless within the taxable year in an amount not in excess of the part charged off within that taxable year.

(B) In the case of a savings and loan association, bank, or financial corporation, in lieu of any deduction under subparagraph (A), in the discretion of the Franchise Tax Board, a reasonable addition to a reserve for bad debts.

(2) When satisfied that a debt is recoverable in part only the Franchise Tax Board may allow that debt, in an amount not in excess of the part charged off within the taxable year, as a deduction; provided, however, that if a portion of a debt is claimed and allowed as a deduction in any year no deduction shall be allowed in any subsequent year for any portion of the debt which in any prior year was charged off, regardless of whether claimed as a deduction in that prior year.

(b) (1) The amendments to this section made during the 1985–86 Regular Session by the act adding this subdivision shall apply only to taxable years beginning after December 31, 1987.

(2) In the case of any taxpayer who maintained a reserve for bad debts for that taxpayer's last taxable year beginning before January 1, 1988, and who is required by the amendments to this section to change its method of accounting for any taxable year, all of the following shall apply:

(A) That change shall be treated as initiated by the taxpayer.

(B) That change shall be treated as made with the consent of the Franchise Tax Board.

(C) The net amount of adjustments required by Article 6 (commencing with Section 24721) of Chapter 13, to be taken into account by the taxpayer shall:

(i) In the case of a taxpayer maintaining a reserve under former subdivision (b) (prior to the amendments made during the 1985–86 Regular Session by the act adding this subdivision), be reduced by the balance in the suspense account under paragraph (4) of that subdivision as of the close of such last taxable year; and

(ii) Be taken into account ratably in each of the first four taxable years beginning after December 31, 1987.

SEC. 133. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for taxable years ending after December 31, 1958, the term ''reasonable allowance'' as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight-line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes with respect to that property shall be treated as a binding election for state purposes under this subdivision with respect to that same property and no separate election under subdivision (e) of Section 23051.5 with respect to that property shall be allowed.

(3) (A) In determining a lease term, both of the following shall apply:

(i) There shall be taken into account options to renew.

(ii) Two or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as one lease.

(B) For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value determined at the time of renewal.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting ''Section 19521'' in lieu of ''Section 460(b)(7)'' of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting ''Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)'' in lieu of ''Subtitle F (other than Sections 6654 and 6655).''

SEC. 134. Section 24351 of the Revenue and Taxation Code is amended to read:

24351. Where, under regulations prescribed by the Franchise Tax Board, the taxpayer and the Franchise Tax Board have, after the date of enactment of this section, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Franchise Tax Board in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice

in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

SEC. 135. Section 24354.1 of the Revenue and Taxation Code is amended to read:

24354.1. (a) Except as provided in subdivisions (b) and (c) of this section, in the case of property of the type defined in Section 1250(c) of the Internal Revenue Code, subdivision (b) of Section 24349 shall not apply and the term ''reasonable allowance'' as used in subdivision (a) of Section 24349 shall include an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight line method,

(2) The declining balance method, using a rate not exceeding 150 percent of the rate which would have been used had the annual allowance been computed under the method described in paragraph (1), or

(3) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a) of Section 24349 except where allowable solely by reason of paragraph (2), (3), or (4) of subdivision (b) of Section 24349.

(b) (1) Subdivision (a) of this section shall not apply, and subdivision (b) of Section 24349 shall apply in any taxable year, to a building or structure—

(A) Which is residential rental property located within the United States or any of its possessions, or located within a foreign country if a method of depreciation for such property comparable to the method provided in paragraph (2) or (3) of subdivision (b) of Section 24349 is provided by the laws of such country and

(B) The original use of which commences with the taxpayer. In the case of residential rental property located within a foreign country, the original use of which commences with the taxpayer, if the allowance for depreciation provided under the laws of such country for such property is greater than that provided under subdivision (a) of this section, but less than that provided under subdivision (b) of Section 24349, the allowance for depreciation under subdivision (b) of Section 24349 shall be limited to the amount provided under the laws of such country.

(2) For purposes of paragraph (1), a building or structure shall be considered to be residential rental property for any taxable year only if 80 percent or more of the gross rental income from such building or structure for such year is rental income from dwelling units (within the meaning of paragraph (3) of subdivision (c) of Section 24354.2. For purposes of the preceding sentence, if any portion of such building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(3) Any change in the computation of the allowance for depreciation for any taxable year, permitted or required by reason of the application of paragraph (1), shall not be considered a change in a method of accounting.

(c) Subdivision (a) of this section shall not apply, and subdivision (b) of Section 24349 shall apply, in the case of property—

(1) The construction, reconstruction, or erection of which was begun before January 1, 1971, or

(2) For which a written contract entered into before January 1, 1971, with respect to any part of the construction, reconstruction, or erection or for the permanent financing thereof, was on January 1, 1971, and at all times thereafter, binding on the taxpayer.

(d) Except as provided in subdivision (e), in the case of property of the type defined in Section 1250(c) of the Internal Revenue Code acquired after December 31, 1970, the original use of which does not commence with the taxpayer, the allowance for depreciation under Sections 24349 to 24354.2, inclusive, shall be limited to an amount computed under—

(1) The straight line method, or

(2) Any other method determined by the Franchise Tax Board to result in a reasonable allowance under subdivision (a) of Section 24349, not including—

(A) Any declining balance method,

(B) The sum of the years-digits method, or

(C) Any other method allowable solely by reason of the application of paragraph (4) of subdivision (b) of Section 24349 or paragraph (3) of subdivision (a) of this section.

(e) In the case of property of the type defined in Section 1250(c) of the Internal Revenue Code which is residential rental property (as defined in paragraph (2) of subdivision (b)) acquired after December 31, 1970, having a useful life of 20 years or more, the original use of which does not commence with the taxpayer, the allowance for depreciation under Sections 24349 to 24354.2, inclusive, shall be limited to an amount computed under—

(1) The straight line method,

(2) The declining balance method, using a rate not exceeding 125 percent of the rate which would have been used had the annual allowance been computed under the method described in paragraph (1), or

(3) Any other method determined by the Franchise Tax Board to result in a reasonable allowance under subdivision (a) of Section 24349, not including—

(A) The sum of the years-digits method,

(B) Any declining balance method using a rate in excess of the rate permitted under paragraph (2), or

(C) Any other method allowable solely by reason of the application of paragraph (4) of subdivision (b) of Section 24349 or paragraph (3) of subdivision (a) of this section.

(f) (1) For purposes of subdivisions (b), (d), and (e), if property of the type defined in Section 1250(c) of the Internal Revenue Code which is not property described in subdivision (a) of Section 24349 when its original use commences, becomes property described in subdivision (a) of Section 24349 after December 31, 1970, such property shall not be treated as property the original use of which commences with the taxpayer.

(2) Subdivisions (d) and (e) shall not apply in the case of property of the type defined in Section 1250(c) of the Internal Revenue Code, acquired after December 31, 1970, pursuant to a written contract for the acquisition of such property or for the permanent financing thereof, which was, on December 31, 1970, and at all times thereafter, binding on the taxpayer.

(g) This section shall not apply to public utility property which means property used predominantly in the trade or business of the furnishing or sale of—

(1) Electrical energy, water, or sewage disposal services,

(2) Gas or steam through a local distribution system,

(3) Telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(4) Transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a state or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any state or political subdivision thereof.

SEC. 136. Section 24355.5 of the Revenue and Taxation Code is amended to read:

24355.5. (a) Section 197 of the Internal Revenue Code, relating to amortization of goodwill and certain other intangibles, shall apply, except as otherwise provided.

(b) (1) Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to effective dates, shall apply, except as otherwise provided.

(2) (A) If a taxpayer has, at any time, made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5 and the federal election shall be binding for purposes of this part.

(B) If a taxpayer has not made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, with respect to property acquired before August 11, 1993, then the taxpayer shall not be allowed to make an election under Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), for purposes of this part, with respect to that property.

(c) Notwithstanding any other provision of this section, each of the following shall apply:

(1) No deduction shall be allowed under this section for any taxable year beginning prior to January 1, 1994.

(2) No inference is intended with respect to the allowance or denial of any deduction for amortization in any taxable year beginning before January 1, 1994.

(3) In the case of an intangible that was acquired in an taxable year beginning before January 1, 1994, the amount to be amortized shall not exceed the adjusted basis of that intangible as of the first day of the first taxable year beginning on or after January 1, 1994, and that amount shall be amortized ratably over the period beginning with the first month of the first taxable year beginning on or after January 1, 1994, and ending 15 years after the month in which the intangible was acquired.

SEC. 137. Section 24356 of the Revenue and Taxation Code is amended to read:

24356. (a) In the case of Section 24356 property, the term ''reasonable allowance'' as used in Section 24349(a) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under Sections 24349 through 24354 to the

taxpayer with respect to such property, of 20 percent of the cost of such property.

(b) If in any one taxable year the cost of Section 24349 property with respect to which the taxpayer may elect an allowance under subsection (a) for such taxable year exceeds ten thousand dollars ($10,000), then subsection (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of ten thousand dollars ($10,000).

(c) (1) The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Franchise Tax Board may by regulations prescribe.

(2) Any election made under this section may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, the term ''Section 24356 property'' means tangible personal property—

(A) Of a character subject to the allowance for depreciation under Sections 24349 through 24354,

(B) Acquired by purchase after December 31, 1958, for use in a trade or business, and

(C) With a useful life (determined at the time of such acquisition) of six years or more.

(2) For purposes of paragraph (1), the term ''purchase'' means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Sections 24427 through 24429 (but, in applying Sections 24428 and 24429 for purposes of this section, paragraph (d) of Section 24429 shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants);

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) For purposes of subsection (b) of this section—

(A) All members of an affiliated group shall be treated as one taxpayer, and

(B) The Franchise Tax Board shall apportion the dollar limitation contained in such subsection (b) among the members of such affiliated group in such manner as it shall by regulations prescribe.

(5) For purposes of paragraphs (2) and (4), the term ''affiliated group'' has the meaning assigned to it by Section 1504 of the Internal Revenue Code of 1954, except that, for such purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in Section 1504(a) of the Internal Revenue Code of 1954.

(6) In applying Section 24353, the adjustment under Section 24916(b)(1) resulting by reason of an election made under this section with respect to any Section 24356 property shall be made before any other deduction allowed by Section 24349(a) is computed.

(e) The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

SEC. 138. Section 24356.5 of the Revenue and Taxation Code is amended to read:

24356.5. (a) Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without regard to taxable year, except as otherwise provided.

(b) Section 179A(e)(5) of the Internal Revenue Code, relating to property used outside the United States, is modified to also refer to Section 24356.4 or 24356.7.

(c) Section 179A(g) of the Internal Revenue Code, relating to termination, is modified to substitute ''December 31, 1994'' for ''December 31, 2004.''

SEC. 139. Section 24356.6 of the Revenue and Taxation Code is amended to read:

24356.6. (a) For each taxable year beginning on or after January 1, 1998, a qualified taxpayer may elect to treat 40 percent of the cost of any Section 24356.6 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified taxpayer places the Section 24356.6 property in service.

(b) (1) An election under this section for any taxable year shall do both of the following:

(A) Specify the items of Section 24356.6 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the qualified taxpayer's original return of the tax imposed by this part for the 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.

(c) (1) For purposes of this section, ''Section 24356.6 property'' means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245 (a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the qualified taxpayer for exclusive use in a trade or business conducted within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), ''purchase'' means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code. However, in applying Sections 267(b) and 267(c) for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants.

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from who it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of that property that is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the qualified taxpayer may not make an election under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one qualified taxpayer.

(B) The qualified taxpayer shall apportion the dollar limitation contained in subdivision (f) among the members of the affiliated group in whatever manner the board shall prescribe.

(6) For purposes of paragraphs (2) and (5), ''affiliated group'' means ''affiliated group'' as defined in Section 1504 of the Internal Revenue

Code, except that, for these purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in Section 1504(a) of the Internal Revenue Code.

(d) (1) For purposes of this section, ''qualified taxpayer'' means a corporation that meets both of the following:

(A) Is engaged in conducting a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive, and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any deduction under this section or Section 17267.6 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term ''pass-through entity'' means any partnership or S corporation.

(e) Any qualified taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.6 property. However, the qualified taxpayer may claim depreciation by any method permitted by Section 24349 commencing with the taxable year following the taxable year in which Section 24356.6 property is placed in service.

(f) The aggregate cost of all Section 24356.6 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of the relevant targeted tax area and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(g) Any amounts deducted under subdivision (a) with respect to Section 24356.6 property that ceases to be used in the qualified taxpayer's trade or business within a targeted tax area at any time before

the close of the second taxable year after the property is placed in service shall be included in income in the taxable year in which the property ceases to be so used.

SEC. 140. Section 24356.7 of the Revenue and Taxation Code is amended to read:

24356.7. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 24356.7 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the taxpayer places the Section 24356.7 property in service.

(b) (1) An election under this section for any taxable year shall do both of the following:

(A) Specify the items of Section 24356.7 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, ''Section 24356.7 property'' means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), ''purchase'' means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Sections 24427 through 24429. However, in applying Sections 24428 and 24429 for purposes of this section, subdivision (d) of Section 24429 shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants.

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of that property that is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer could not make a federal election under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b) of this section, both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the members of the affiliated group in whatever manner the board shall prescribe.

(6) For purposes of paragraphs (2) and (5), ''affiliated group'' means ''affiliated group'' as defined in Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in Section 1504(a) of the Internal Revenue Code.

(d) For purposes of this section, ''taxpayer'' means a bank or corporation that conducts 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.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.7 property. However, the taxpayer may claim depreciation by any method permitted by Section 24349 commencing with the taxable year following the taxable year in which Section 24356.7 property is placed in service.

(f) The aggregate cost of all Section 24356.7 property that may be taken into account under subdivision (a) for any taxable years shall not exceed the following applicable amount for the taxable year of the designation of the relevant enterprise zone 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) Any amounts deducted under subdivision (a) with respect to Section 24356.7 property that ceases to be used in the taxpayer's trade or business within an enterprise zone at any time before the close of the second taxable year after the property is placed in service shall be included in income in the taxable year in which the property ceases to be so used.

SEC. 141. Section 24356.8 of the Revenue and Taxation Code is amended to read:

24356.8. (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 24356.8 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the taxpayer places the Section 24356.8 property in service.

(b) (1) An election under this section for any taxable year shall meet both of the following requirements:

(A) Specify the items of Section 24356.8 property to which the election applies and the portion of the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the 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.

(c) (1) For purposes of this section, ''Section 24356.8 property'' means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased 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 all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The property is not acquired by one component member of an affiliated group from another component member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of that property as is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the component members of the affiliated group in whatever manner the board shall by regulations prescribe.

(6) For purposes of paragraphs (2) and (5), ''affiliated group'' has the meaning assigned to it by Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in Section 1504(a) of the Internal Revenue Code.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code.

(8) In the case of an S corporation, the dollar limitation contained in subdivision (f) shall be applied at the entity level and at the shareholder level.

(d) For purposes of this section:

(1) ''LAMBRA'' means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(2) ''Taxpayer'' means a corporation that conducts a trade or business within a LAMBRA and, for the first two 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 that 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.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.8 property.

(f) The aggregate cost of all Section 24356.8 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 (d), then the amount of the deduction previously claimed

shall be added to the taxpayer's net 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. 142. Section 24357 of the Revenue and Taxation Code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board.

(b) (1) In the case of a corporation reporting its income on the accrual basis, the corporation may elect to treat the contribution as paid during that taxable year if both of the following occur:

(A) The board of directors authorizes a charitable contribution during the taxable year.

(B) Payment of the contribution is made after the close of that taxable year and on or before the 15th day of the third month following the close of the taxable year.

(2) The election allowed by paragraph (1) may be made only at the time of the filing of the return for the taxable year, and shall be signified in the manner as the Franchise Tax Board shall by regulations prescribe.

(c) For purposes of this section, payment of a charitable contribution that consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in Section 24428. For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(d) No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in that travel.

(e) (1) Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, shall apply, except as otherwise provided.

(2) No deduction shall be denied under Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, upon a showing that the requirements in Section 170(f)(8)

of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

SEC. 143. Section 24357.2 of the Revenue and Taxation Code is amended to read:

24357.2. (a) In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under Section 24357 only to the extent that the value of the interest contributed would be allowable as a deduction under Section 24357 if such interest had been transferred in trust. For purposes of this subdivision, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(b) Subdivision (a) shall not apply to a contribution of—

(1) A remainder interest in a personal residence or farm,

(2) An undivided portion of the taxpayer's entire interest in property,

(3) A qualified conservation contribution (as defined in Section 24357.7).

(c) The amendments made to this section by the 1977–78 Legislature shall apply with respect to contributions of transfers made after December 31, 1976, and before June 14, 1977.

(d) The amendments made to this section by the 1981–82 Regular Session of the Legislature shall apply with respect to contributions or transfers made in taxable years beginning on and after January 1, 1982.

SEC. 144. Section 24357.7 of the Revenue and Taxation Code is amended to read:

24357.7. (a) (1) For purposes of paragraph (3) of subdivision (b) of Section 24357.2, the term ''qualified conservation contribution'' means a contribution—

(A) Of a qualified real property interest,

(B) To a qualified organization,

(C) Exclusively for conservation purposes.

(2) For purposes of this subdivision, the term ''qualified real property interest'' means any of the following interests in real property:

(i) The entire interest of the donor other than a qualified mineral interest.

(ii) A remainder interest.

(iii) A restriction (granted in perpetuity) on the use which may be made of the real property.

(b) For purposes of subdivision (a), the term ''qualified organization'' means an organization which:

(1) Is described in subdivision (a) or (b) of Section 24359, or

(2) Is described in Section 23701(d), and—

(A) Meets the requirements of Section 509(a)(2) of the Internal Revenue Code, or

(B) Meets the requirements of Section 509(a)(3) of the Internal Revenue Code and is controlled by an organization described in paragraph (1) or in subparagraph (A).

(c) For purposes of this section, the term ''conservation purpose'' means any of the following:

(1) The preservation of land areas for outdoor recreation by, or the education of, the general public.

(2) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.

(3) The preservation of open space (including farm land and forest land) where that preservation is for any of the following:

(A) For the scenic enjoyment of the general public.

(B) Pursuant to a clearly delineated federal, state, or local governmental conservation policy, and will yield a significant public benefit.

(C) The preservation of a historically important land area or a certified historic structure.

(d) The term ''certified historic structure'' means any building, structure, or land area which:

(1) Is listed in the National Register, or

(2) Is located in a registered historic district (as defined in Section 47(c)(3)(B)) of the Internal Revenue Code and is certified by the Secretary of the Interior to the secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies that sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this part for the taxable year in which the transfer is made.

(e) For purposes of this section:

(1) A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(2) (A) Except as provided in subparagraph (B), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, this subdivision shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(B) With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, paragraph (1) shall be treated as met if the probability of surface mining occurring on that property is so remote as to be negligible.

(f) For purposes of this section, the term ''qualified mineral interest'' means—

(1) Subsurface oil, gas, or other minerals; and

(2) The right to access to those minerals.

SEC. 145. Section 24357.9 of the Revenue and Taxation Code is amended to read:

24357.9. (a) In the case of a qualified elementary or secondary educational contribution, the amount otherwise allowed as a deduction under Section 24357 shall be reduced by that amount of the reduction provided by Section 24357.1 which is no greater than the sum of the following:

(1) One-half of the amount computed pursuant to Section 24357.1 (computed without regard to this paragraph).

(2) The amount (if any) by which the charitable contribution deduction under this section for any qualified elementary or secondary educational contribution (computed by taking into account the amount determined by paragraph (1), but without regard to this paragraph) exceeds twice the basis of the property.

(b) For purposes of this section, the term ''qualified elementary or secondary educational contribution'' means a charitable contribution by a corporation of any computer technology or equipment, but only if all of the following apply:

(1) The contribution is to either of the following:

(A) An educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code.

(B) An entity described in Section 23701d and exempt from tax under Section 23701 (other than an entity described in subparagraph (A)) that is organized primarily for purposes of supporting elementary and secondary education in California.

(2) The contribution is made not later than two years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed).

(3) The original use of the property is by the donor or the donee.

(4) Substantially all of the use of the property by the donee is for use within California for educational purposes in any of the grades K through 12 that are related to the purpose or function of the organization or entity.

(5) The property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation, and transfer of costs.

(6) The property will fit productively into the entity's educational plan.

(7) The entity's use and disposition of the property will be in accordance with paragraphs (4) and (5).

(c) A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in Section 509 of the

Internal Revenue Code) shall be treated as a qualified elementary or secondary educational contribution for purposes of this section if both of the following apply:

(1) The contribution to the private foundation satisfies the requirements of paragraphs (2) and (5) of subdivision (b).

(2) Within 30 days after that contribution, the private foundation does both of the following:

(A) Contributes the property to an entity described in paragraph (1) of subdivision (b) that satisfies the requirements of paragraphs (4) to (7), inclusive, of subdivision (b).

(B) Notifies the donor of that contribution.

(d) For purposes of this section, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of that property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in that property.

(e) For purposes of this section:

(1) ''Computer technology or equipment'' means computer software (as defined by Section 197(e)(3)(B) of the Internal Revenue Code), computer or peripheral equipment (as defined by Section 168(i)(2)(B) of the Internal Revenue Code), and fiber-optic cable related to computer use.

(2) ''Corporation'' shall not include any of the following:

(A) An ''S corporation.''

(B) A personal holding company (as defined in Section 542 of the Internal Revenue Code).

(C) A service organization (as defined in Section 414(m)(3) of the Internal Revenue Code).

(f) This section shall not apply to any contribution made during any taxable year beginning on or after January 1, 2000.

SEC. 146. Section 24358 of the Revenue and Taxation Code is amended to read:

24358. (a) In the case of a corporation, the total deductions under Section 24357 for any taxable year shall not exceed 10 percent of the taxpayer's net income computed without regard to any of the following:

(1) Subdivision (e) of Section 23802, relating to a deduction for built-in gains and passive investment income.

(2) Sections 24357 to 24359, inclusive, relating to the deduction for contributions.

(3) Article 2 (commencing with Section 24401) of Chapter 7 (except Sections 24407 to 24409, inclusive, relating to organizational expenses).

(b) Section 170(d)(2) of the Internal Revenue Code, relating to carryovers of excess contributions, shall apply with respect to excess

contributions made during taxable years beginning on or after January 1, 1996.

SEC. 147. Section 24360 of the Revenue and Taxation Code is amended to read:

24360. In the case of any bond, as defined in Section 24363, the following rules shall apply to the amortizable bond premium (determined under Section 24361 on the bond):

(a) In the case of a bond, the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(b) In the case of any bond the interest on which is excludable from gross income under Chapter 3 (commencing with Section 23501), no deduction shall be allowed for the amortizable bond premium for the taxable year.

SEC. 148. Section 24361 of the Revenue and Taxation Code is amended to read:

24361. (a) For purposes of subsection (b), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(1) With reference to the amount of the basis (for determining loss on sale or exchange) of such bond;

(2) With reference to the amount payable on maturity or on earlier call date; and

(3) With adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which Section 24360 becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(b) The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond described in Section 24362(a) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than three years after the date of such issue, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(c) (1) Except as provided in regulations, the determinations required under subdivisions (a) and (b) shall be made on the basis of the taxpayer's yield to maturity determined by—

(A) Using the taxpayer's basis for purposes of determining loss on sale or exchange of the obligation, and

(B) Compounding at the close of each accrual period (as defined in Section 1272(a)(5) of the Internal Revenue Code).

(2) For purposes of paragraph (1), if the amount payable on an earlier call date is used under subparagraph (B) of paragraph (1) in determining the amortizable bond premium attributable to the period before the earlier call date, that bond shall be treated as maturing on that date for the amount so payable and then reissued on that date for the amount so payable.

SEC. 149. Section 24362 of the Revenue and Taxation Code is amended to read:

24362. (a) Sections 24360 to 24363.5, inclusive, shall apply to the bonds only if the taxpayer has elected to have these sections apply; in the case of any taxpayer, bonds the interest on which is not excludable from gross income.

(b) The election authorized under this section shall be made in accordance with such regulations as the Franchise Tax Board shall prescribe. If such election is made with respect to any bond (described in subsection (a)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Franchise Tax Board permits him, subject to such conditions as the Franchise Tax Board deems necessary, to revoke such election.

SEC. 150. Section 24363 of the Revenue and Taxation Code is amended to read:

24363. For purposes of Sections 24360 to 24363.5, inclusive, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

SEC. 151. Section 24364 of the Revenue and Taxation Code is amended to read:

24364. Notwithstanding Article 3 (commencing with Section 24421), all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction. However, the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Franchise Tax Board, is chargeable to capital account if the taxpayer elects, in accordance with those

regulations, to treat that portion as so chargeable. The election, if made, shall be for the total amount of that portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Franchise Tax Board permits a revocation of the election subject to such conditions as it deems necessary.

SEC. 152. Section 24377 of the Revenue and Taxation Code is amended to read:

24377. (a) A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by it during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) For purposes of subdivision (a), the term ''land used in farming'' means land used (before or simultaneously with the expenditures described in subdivision (a)) by the taxpayer or its tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) The election under subdivision (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for that taxable year. The election shall be made in the form and manner as the Franchise Tax Board may prescribe. The election may not be revoked except with the consent of the Franchise Tax Board.

SEC. 153. Section 24383 of the Revenue and Taxation Code is amended to read:

24383. (a) Every taxpayer, at the election of the taxpayer, shall be entitled to a deduction of the cost of repairing or remodeling any building, facility or transportation vehicle owned or leased by the taxpayer at the time of such repairing or remodeling, in order to permit handicapped or elderly individuals to enter or leave such building, facility or transportation vehicle, to increase the access handicapped or elderly individuals would have to such building, facility or transportation vehicle, or to allow handicapped or elderly individuals more effective use of the building, facility or transportation vehicle, provided that the repair or remodeling meets one or more standards established pursuant to Section 4450 or 4451 of the Government Code. In the absence of such state standards, those standards established by the Secretary of the Treasury of the United States with the concurrence of the Architectural and Transportation Barriers Compliance Board shall

be used. The installation of emergency egress/safe area refuge systems shall be eligible for such deductions.

(b) The deduction authorized by this section shall be taken with respect to the taxable year in which such repairing or remodeling is completed.

(c) The deduction provided by this section with respect to any taxable year shall be in lieu of any deduction with respect to such repairing or remodeling relating to exhaustion, wear and tear or obsolescence. If, however, the costs of that repair or remodeling exceed the limit set forth in subdivision (g), the remaining balance may be charged to capital account.

(d) If any building, facility or transportation vehicle is owned by more than one person, a taxpayer may deduct a portion of the costs of such repairing or remodeling apportionate to the interest in such building, facility or transportation vehicle which is owned by the taxpayer.

(e) For purposes of this section, ''building, facility or transportation vehicle'' means a building, facility or transportation vehicle, or part thereof, which is intended to be used, and is actually used, by the taxpayer or the general public, in the taxpayer's business or trade.

(f) For purposes of this section, ''handicapped individual'' means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual, and ''elderly individual'' means an individual who is 65 years of age or older.

(g) The deduction authorized by this section shall not exceed fifteen thousand dollars ($15,000) with respect to any taxpayer for any taxable year.

(h) The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(i) This section shall apply to taxable years beginning after December 31, 1976.

(j) (1) The State Fire Marshal in cooperation with the Department of Rehabilitation and the Department of Aging shall adopt building standards and regulations for emergency egress/safe area refuge systems. The building standards and regulations shall include, but not be limited to, minimum requirements for safety, reliability, durability and usability. Emergency egress/safe area refuge systems that comply with the building standards and regulations adopted pursuant to this section shall be eligible for the deduction provided by this section.

(2) It is the intent of the Legislature that this section and the building standards adopted pursuant to this section do not supersede more

restrictive building standards and regulations adopted by the state and local governments.

(k) ''Emergency egress/safe area refuge system'' shall include, but not be limited to, all of the following:

(1) A building floor divided into not less than two compartments by not less than one-hour fire-resistive construction. Each door opening in the construction shall be protected by a twenty minute fire-resistive assembly as defined in regulations of the State Fire Marshal. Duct openings shall be protected by single-blade or curtain-type fire dampers to restrict the passage of smoke or flame. The smaller of the compartmental areas shall be not less than one-fourth the floor area of the story. Each such compartment shall contain a stairway or elevator or other means of ready egress from the building.

(2) A fire alarm system defined in regulations by the State Fire Marshal.

(3) Use of existing exiting systems and warning devices when practical, including, but not limited to, stairways, elevators, and fire alarms.

(4) Accommodations for wheelchairs and all attached wheelchair equipment, as well as wheelchair occupants.

(5) Its own power source.

SEC. 154. Section 24402 of the Revenue and Taxation Code is amended to read:

24402. (a) A portion of the dividends received during the taxable year declared from income which has been included in the measure of the taxes imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501) upon the taxpayer declaring the dividends.

(b) The portion of dividends which may be deducted under this section shall be as follows:

(1) In the case of any dividend described in subdivision (a), received from a ''more than 50 percent owned corporation,'' 100 percent.

(2) In the case of any dividend described in subdivision (a), received from a ''20 percent owned corporation,'' 80 percent.

(3) In the case of any dividend described in subdivision (a), received from a corporation that is less than 20 percent owned, 70 percent.

(c) For purposes of this section:

(1) The term ''more than 50 percent owned corporation'' means any corporation if more than 50 percent of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(2) The term ''20 percent owned corporation'' means any corporation if 20 percent or more of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(d) (1) No deduction shall be allowed under this section in respect of any dividend on any share of stock:

(A) which is held by the taxpayer for 45 days or less during the 90-day period beginning on the date which is 45 days before the date on which the share becomes ex-dividend with respect to that dividend, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(2) In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to that stock which are attributable to a period or periods aggregating in excess of 366 days, subparagraph (A) of paragraph (1) shall be applied as follows:

(A) By substituting ''90 days'' for ''45 days'' in each place it appears.

(B) By substituting ''180-day period'' for ''90-day period.''

(3) For purposes of this subdivision, in determining the period for which the taxpayer has held any share of stock:

(A) the day of disposition, but not the day of acquisition, shall be taken into account, and

(B) Section 1223(4) of the Internal Revenue Code shall not apply.

(4) Section 246(c)(4) of the Internal Revenue Code, relating to the holding period reduced for periods where risk of loss diminished, shall apply, except as otherwise provided.

(e) (1) The amendments made by the act adding this subdivision shall apply to dividends received or accrued after the 30th day after the date of the enactment of the act adding this subdivision.

(2) The amendments made by the act adding this subdivision shall not apply to dividends received or accrued during the two-year period beginning on the date of the enactment of the act adding this subdivision if:

(A) the dividend is paid with respect to stock held by the taxpayer on January 1, 1998 and all times thereafter until the dividend is received,

(B) that stock is continuously subject to a position described in Section 246(c)(4) of the Internal Revenue Code on January 1, 1998, and all times thereafter until the dividend is received, and

(C) that stock and position are clearly identified in the taxpayer's records within 30 days after the date of the enactment of the act adding this subdivision.

(3) Stock shall not be treated as meeting the requirement of subparagraph (B) of paragraph (2) if the position is sold, closed, or otherwise terminated and reestablished.

SEC. 155. Section 24404 of the Revenue and Taxation Code is amended to read:

24404. In the case of farmers, fruit growers, or like associations organized and operated in whole or in part on a cooperative or mutual basis, (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, which may include reasonable reserves, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing, or producing, supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses, all income resulting from or arising out of such business activities for or with their members carried on by them or their agents; or when done on a nonprofit basis for or with nonmembers.

For the purposes of this section ''all income resulting from or arising out of such business activities for or with their members'' shall include all amounts, whether or not derived from patronage, allocated to members during the taxable year. Amounts allocated include cash, merchandise, capital stock, revolving fund certificates, certificates of indebtedness, retain certificates, letters of advice, or written instruments which in some other manner disclose to each member the dollar amount allocated to him. Allocations made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to income derived before the close of such year.

SEC. 156. Section 24409 of the Revenue and Taxation Code is amended to read:

24409. The election provided by Section 24407 may be made for any taxable year beginning after December 31, 1960, but only if made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof). The period so elected shall be adhered to in computing the income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to the expenditures paid or incurred on or after June 23, 1961.

SEC. 157. 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 taxable 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. 158. Section 24415 of the Revenue and Taxation Code is amended to read:

24415. (a) To the extent specified in subdivision (b), there shall be allowed as a deduction to a taxpayer those payments of the taxpayer which are made pursuant to an interindemnity arrangement specified in Section 1280.7 of the Insurance Code and which are paid to a trust of members of a cooperative corporation organized and operated under Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code and the members of which consist solely of physicians and surgeons licensed in this state.

(b) The deduction authorized by subdivision (a) shall be taken with respect to the taxable year in which the payment is made and shall be taken only to the extent that the payment does not exceed the amount which would otherwise be payable to an independent insurance company for similar coverage for medical malpractice insurance in that taxable year. Any portion of the payment in excess of that amount shall be treated as a payment under the interindemnity arrangement for five succeeding taxable years and may be carried forward as a deduction to those five succeeding taxable years until used. The deduction shall be applied first to the earliest years possible.

(c) In the event any payment is refunded by the trust to the taxpayer for any reason, the payment shall be included in the taxpayer's income for the taxable year in which it is received to the extent that the payment or any portion thereof was taken as a deduction in any earlier taxable year.

(d) Any refund of a payment which is made by a trust to a taxpayer shall be reported by the trust to the Franchise Tax Board in the year in which the refund is made. The trust shall furnish the taxpayer with a copy of that report. In the case of any payment to be made to a taxpayer who is not a resident of the State of California in the year in which the refund is made, the Franchise Tax Board may, by regulation, require the trust to withhold an amount from the refund, determined by the Franchise Tax Board to reasonably represent the amount of tax due when that refund is included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at a time as it may designate.

(e) For purposes of this section:

(1) ''Payment'' means a contribution to or an assessment by an interindemnity arrangement described in Section 1280.7 of the Insurance Code.

(2) ''Taxpayer'' means a corporation whose shares are held by a physician and surgeon, or physicians and surgeons, licensed in this state which is a participating member in an interindemnity arrangement described in Section 1280.7 of the Insurance Code.

(3) ''Trust'' means a trust described in subdivision (a).

(f) Upon request, the trust shall submit to the Franchise Tax Board the names and membership dates of all participating corporations.

(g) The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

SEC. 159. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Section 24416.1, 24416.2, 24416.4, 24416.5, or 24416.6, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(2) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be

carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five taxable years following the taxable year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, ''net loss'' means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) Except as provided in paragraphs (2), (3), and (4), for each taxable year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which

net operating losses may be carried, is modified to substitute ''five taxable years'' in lieu of ''20 taxable years.''

(2) In the case of a ''new business,'' the ''five taxable years'' referred to in paragraph (1) shall be modified to read as follows:

(A) ''Eight taxable years'' for a net operating loss attributable to the first taxable year of that new business.

(B) ''Seven taxable years'' for a net operating loss attributable to the second taxable year of that new business.

(C) ''Six taxable years'' for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in a taxable year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) ''Eligible small business'' means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (g), ''new business'' means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) ''Title 11 or similar case'' shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) ''Biopharmaceutical activities'' means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) ''Other biotechnology activities'' means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year which may be carried forward to another taxable year.

(2) The amount of any loss carry forward which may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997.

SEC. 160. 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 taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) ''Net operating loss'' means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 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 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 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.

(ii) If a loss carryover is allowable pursuant to this section for any taxable year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) ''Enterprise zone expiration date'' means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) The changes made to this subdivision by the act adding this paragraph shall apply to taxable 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 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 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 a taxable 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 taxable year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

SEC. 161. Section 24416.4 of the Revenue and Taxation Code is amended to read:

24416.4. (a) The term ''qualified taxpayer'' as used in Section 24416.1 includes a corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code. 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, except as provided in subparagraph (B), a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) 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 taxable year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the taxable year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(3) ''Net operating loss'' means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(A) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(B) ''The Los Angeles Revitalization Zone'' shall be substituted for ''this state.''

(4) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with subdivision (c).

(5) If a loss carryover is allowable pursuant to this section for any taxable year after the Los Angeles Revitalization Zone designation has

expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in paragraph (2) and allowing a net operating loss deduction.

(6) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(7) ''Los Angeles Revitalization Zone expiration date'' means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(b) This section shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this section.

(c) 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 (d).

(d) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.5, or 24416.6 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.

(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.5, or 24416.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (c) shall be included in the election under Section 24416.1.

(f) This section shall cease to be operative on December 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this section.

SEC. 162. Section 24416.5 of the Revenue and Taxation Code is amended to read:

24416.5. (a) For each taxable 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 taxable year and, except as provided in subparagraph (B), 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) 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 taxable year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the taxable 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 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, 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 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 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 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.

(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 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 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 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 24416.2, 24416.4, or 24416.6 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 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 taxable year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

(e) This section shall apply to taxable years beginning on and after January 1, 1998.

SEC. 163. Section 24416.6 of the Revenue and Taxation Code is amended to read:

24416.6. (a) For each taxable year beginning on or after January 1, 1998, the term ''qualified taxpayer'' as used in Section 24416.1 includes a corporation that meets both of the following:

(1) Is engaged in the conduct of a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(2) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level.

(b) For purposes of subdivision (a), 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 that the area in which the qualified taxpayer conducts a trade or business is designated as a targeted tax area shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) ''Net operating loss'' means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the qualified taxpayer's business activities within the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) prior to the targeted tax area expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Loss shall be apportioned to the targeted tax area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(B) ''The targeted tax area'' shall be substituted for ''this state.''

(3) A net operating loss carryover shall be a deduction only with respect to the qualified taxpayer's business income attributable to the targeted tax area as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(4) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the targeted tax area. 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 targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this subdivision as follows:

(A) Business income shall be apportioned to the targeted tax area 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 targeted tax area 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 targeted tax area 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 subdivision for any taxable year after the targeted tax area expiration date, the targeted tax area designation shall be deemed to remain in existence for purposes of computing the limitation specified in subparagraph (B) and allowing a net operating loss deduction.

(5) ''Targeted tax area expiration date'' means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(c) 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 (e).

(d) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.5 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.

(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.5 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (c) shall be included in the election under Section 24416.1.

(f) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 164. Section 24424 of the Revenue and Taxation Code is amended to read:

24424. (a) No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under that policy or contract.

(2) Any amount paid or accrued on indebtedness incurred to purchase or carry a single premium life insurance, endowment, or annuity contract. This paragraph shall apply with respect to annuity contracts only as to contracts purchased after December 31, 1954.

(3) Except as provided in subdivision (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of that contract (either from the insurer or otherwise). This paragraph shall apply only with respect to contracts purchased after August 6, 1963.

(4) Except as provided in subdivision (d), any interest paid or accrued on any indebtedness with respect to one or more insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

This paragraph shall apply with respect to contracts purchased after June 20, 1986.

(b) Paragraph (1) of subdivision (a) shall not apply to either of the following:

(1) Any annuity contract described in Section 72(s)(5) of the Internal Revenue Code.

(2) Any annuity contract to which Section 72(u) of the Internal Revenue Code applies.

(c) For purposes of paragraph (2) of subdivision (a), a contract shall be treated as a single premium contract if either of the following conditions exist:

(1) Substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased.

(2) An amount is deposited after December 31, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Paragraph (3) of subdivision (a) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in paragraph (3) of subdivision (a) if any of the following is applicable:

(1) No part of four of the annual premiums due during the seven-year period (beginning with the date the first premium on the contract to

which that plan relates was paid) is paid under that plan by means of indebtedness.

(2) The total of the amounts paid or accrued by that person during that taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of paragraph (3) of subdivision (a) does not exceed one hundred dollars ($100).

(3) That amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in its financial obligations.

(4) That indebtedness was incurred in connection with its trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new seven-year period described in that paragraph with respect to that contract shall commence on the date the first increased premium is paid.

(e) (1) Paragraph (4) of subdivision (a) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of that indebtedness with respect to policies and contracts covering that individual does not exceed fifty thousand dollars ($50,000).

(2) (A) No deduction shall be allowed by reason of paragraph (1) or the last sentence of subdivision (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of that interest exceeds the amount which would have been determined if the applicable rate of interest were used for that month.

(B) For purposes of subparagraph (A):

(i) The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month.

(ii) In the case of indebtedness on a contract purchased on or before June 20, 1986, all of the following shall apply:

(I) If the contract provides a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased.

(II) If the contract provides a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be the Moody's rate described in clause (i) for the third month preceding the first month in that period.

(III) For purposes of subclause (II), the term ''applicable period'' means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than that 12-month

period to be its applicable period. That election shall be made not later than the 90th day after the date of the enactment of the act adding this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after December 31, 1995, and all subsequent taxable years, unless revoked with the consent of the Franchise Tax Board.

(3) For purposes of paragraph (1), ''key person'' means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of:

(A) Five individuals.

(B) The lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) For purposes of this subdivision, ''20-percent owner'' means both of the following:

(A) If the taxpayer is a corporation, any person who directly owns 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation.

(B) If the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) (A) For purposes of subparagraph (A) of paragraph (4) and for purposes of applying the fifty thousand dollars ($50,000) limitation in paragraph (1) both of the following shall apply:

(i) All members of a controlled group shall be treated as one taxpayer.

(ii) The limitation shall be allocated among the members of the controlled group in the manner the Franchise Tax Board may prescribe.

(B) For purposes of this paragraph, all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as members of a controlled group.

(f) (1) No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to the interest expense as:

(A) The taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) The sum of:

(i) In the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of those policies and contracts, and

(ii) In the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of Section 24916) of those assets.

(3) For purposes of this subdivision, the term ''unborrowed policy cash value'' means, with respect to any life insurance policy or annuity or endowment contract, the excess of:

(A) The cash surrender value of the policy or contract determined without regard to any surrender charge, over

(B) The amount of any loan with respect to that policy or contract.

(4) (A) Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if the policy or contract covers only one individual and if that individual is (at the time first covered by the policy or contract):

(i) A 20-percent owner of the entity, or

(ii) An individual (not described in clause (i)) who is an officer, director, or employee of that trade or business.

A policy or contract covering a 20-percent owner of the entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of the owner and the owner's spouse.

(B) Paragraph (1) shall not apply to any annuity contract to which Section 72(u) of the Internal Revenue Code applies.

(C) Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) For purposes of subparagraph (A), the term ''20-percent owner'' has the meaning given such term by paragraph (4) of subdivision (e).

(5) (A) (i) This subdivision shall not apply to any policy or contract held by a natural person.

(ii) If a trade or business is directly or indirectly the beneficiary under any policy or contract, the policy or contract shall be treated as held by that trade or business and not by a natural person.

(iii) (I) Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) A copy of the report required for federal purposes under Section 264(f) of the Internal Revenue Code shall be filed with the Franchise Tax Board at a time and in the manner specified for federal purposes and shall be treated as a statement referred to in Section 6724(d)(1) of the Internal Revenue Code.

(B) In the case of a partnership or S corporation, this subdivision shall be applied at the partnership and corporate levels.

(6) (A) If interest on any indebtedness is disallowed under subdivision (a) or Section 24425, both of the following shall apply:

(i) The disallowed interest shall not be taken into account for purposes of applying this subdivision.

(ii) The amount otherwise taken into account under subparagraph (B) of paragraph (2) shall be reduced (but not below zero) by the amount of the indebtedness.

(B) This subdivision shall be applied before the application of Section 263A of the Internal Revenue Code, relating to capitalization of certain expenses where taxpayer produces property.

(7) The term ''interest expense'' means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of Section 24344) for the taxable year (determined without regard to this subdivision, Section 24425, and Section 291 of the Internal Revenue Code).

(8) All members of a controlled group (within the meaning of subparagraph (B) of paragraph (5) of subdivision (e)) shall be treated as one taxpayer for purposes of this subdivision.

(g) (1) The amendments made to this section by the act adding this subdivision shall apply to interest paid or accrued after December 31, 1995.

(2) (A) The amendments made to this section by the act adding this subdivision shall not apply to qualified interest paid or accrued on that indebtedness after December 31, 1995, and before January 1, 1999, in the case of either of the following:

(i) Indebtedness incurred before January 1, 1996.

(ii) Indebtedness incurred before January 1, 1997, with respect to any contract or policy entered into in 1994 or 1995.

(B) For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for that month on that indebtedness if—

(i) In the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

(ii) The lesser of the following rates of interest were used for that month:

(I) The rate of interest specified under the terms of the indebtedness as in effect on December 31, 1995 (and without regard to modification of the terms after that date).

(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates

as published by Moody's Investors Service, Inc., or any successor thereto, for that month. For purposes of clause (i), all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as one person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

(C) For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent

(3) This subdivision shall not apply to any contract purchased on or before June 20, 1986, except that paragraph (2) of subdivision (d) shall apply to interest paid or accrued after December 31, 1995.

(h) (1) Any amount received under any life insurance policy or endowment or annuity contract described in paragraph (4) of subdivision (a) shall be includable in gross income (in lieu of any other inclusion in gross income) ratably over the four-taxable-year period beginning with the taxable year that amount would (but for this paragraph) be includable, upon the occurrence of either of the following:

(A) The complete surrender, redemption, or maturity of that policy or contract during calendar year 1996, 1997, or 1998.

(B) The full discharge during calendar year 1996, 1997, or 1998 of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract.

(2) Paragraph (1) shall only apply to the extent the amount is includable in gross income for the taxable year in which the event described in subparagraph (A) or (B) of paragraph (1) occurs.

(3) Solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) or solely by reason of no additional premiums being received under the contract by reason of a lapse occurring after December 31, 1995, a contract shall not be treated as either of the following:

(A) Failing to meet the requirement of paragraph (1) of subdivision (c).

(B) A single premium contract under paragraph (1) of subdivision (b).

(i) The amendments made by the act adding this subdivision shall apply to contracts issued after June 8, 1997, in taxable years beginning on or after January 1, 1998. For purposes of the preceding sentence, any

material increase in the death benefit or other material change in the contract shall be treated as a new contract, except that the addition of covered lives shall be treated as a new contract only with respect to those additional covered lives. For purposes of this subdivision, an increase in the death benefit under a policy of contract issued in connection with a lapse described in Section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 shall not be treated as a new contract.

SEC. 165. Section 24425 of the Revenue and Taxation Code is amended to read:

24425. Any amount otherwise allowable as a deduction which is allocable to one or more classes of income not included in the measure of the tax imposed by this part, regardless of whether such income was received or accrued during the taxable year.

SEC. 166. Section 24434 of the Revenue and Taxation Code is amended to read:

24434. (a) In the case of a taxpayer (other than a bank as defined in Section 23039) no deduction shall be allowed under Section 24347 or 24348 by reason of the worthlessness of any debt owed by a political party.

(b) (1) For purposes of subdivision (a), the term ''political party'' means any of the following:

(A) A political party.

(B) A national, state, or local committee of a political party.

(C) A committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice presidential electors or of any individual whose name is presented for election to any federal, state, or local elective public office, whether or not such individual is elected.

(2) For purposes of paragraph (1)(C), the term ''contributions'' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) For purposes of paragraph (1)(C), the term ''expenditures'' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

(c) In the case of a taxpayer who uses an accrual method of accounting, subdivision (a) shall not apply to a debt which accrued as a receivable on a bona fide sale of goods or services in the ordinary course of a taxpayer's trade or business if both of the following apply:

(1) For the taxable year in which the receivable accrued, more than 30 percent of all receivables which accrued in the ordinary course of the trades or businesses of the taxpayer were due from political parties.

(2) The taxpayer made substantial continuing efforts to collect on the debt.

SEC. 167. Section 24436.1 of the Revenue and Taxation Code is amended to read:

24436.1. (a) In computing net income, no deductions (including deductions for cost of goods sold) shall be allowed to any taxpayer on any of its gross income directly derived from illegal activities as defined in Sections 266h or 266i of, or in Chapter 4 (commencing with Section 211) of Title 8 of, Chapter 7.5 (commencing with Section 311) of Title 9 of, Chapter 8 (commencing with Section 314) of Title 9 of, or Chapter 2 (commencing with Section 459), Chapter 5 (commencing with Section 484), or Chapter 6 (commencing with Section 503) of Title 13 of, Part 1 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code; nor shall any deductions be allowed to any taxpayer on any of its gross income derived from any other activities which directly tend to promote or to further, or are directly connected or associated with, those illegal activities.

(b) A prior, final determination by a court of competent jurisdiction of this state in any criminal proceedings or any proceeding in which the state, county, city and county, city, or other political subdivision was a party thereto on the merits of the legality of the activities of a taxpayer or predecessor in interest of a taxpayer shall be binding upon the Franchise Tax Board and the State Board of Equalization.

(c) This section shall be applied with respect to taxable years which have not been closed by a statute of limitations, res judicata, or otherwise.

SEC. 168. 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 taxable 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 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 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. 169. Section 24438 of the Revenue and Taxation Code is amended to read:

24438. (a) No deduction shall be allowed for any interest paid or incurred by a taxpayer during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) Five million dollars ($5,000,000), reduced by

(2) The amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31, 1967, to provide consideration for an acquisition described in paragraph (1) of subdivision (b), but (B) which are not corporate acquisition indebtedness.

(b) For purposes of this section, the term ''corporate acquisition indebtedness'' means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as ''issuing corporation'') if—

(1) Such obligation is issued to provide consideration for the acquisition of—

(A) Stock in another corporation (hereinafter in this section referred to as ''acquired corporation''), or

(B) Assets of another corporation (hereinafter in this section referred to as ''acquired corporation'') pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) Such obligation is either—

(A) Subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) Expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) The bond or other evidence of indebtedness is either—

(A) Convertible directly or indirectly into stock of the issuing corporation, or

(B) Part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) As of a day determined under paragraph (1) of subdivision (c) either—

(A) The ratio of debt to equity (as defined in paragraph (2) of subdivision (c)) of the issuing corporation exceeds 2 to 1, or

(B) The projected earnings (as defined in paragraph (3) of subdivision (c)), do not exceed three times the annual interest to be paid or incurred (determined under paragraph (4) of subdivision (c)).

(c) For purposes of paragraph (4) of subdivision (b)—

(1) Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in paragraph (1) of subdivision (b) of stock in, or assets of, the acquired corporation.

(2) The term ''ratio of debt to equity'' means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) (A) The term ''projected earnings'' means the ''average annual earnings'' (as defined in subparagraph (B)) of—

(i) The issuing corporation only, if cause (ii) does not apply, or

(ii) Both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in Section 24564), or has acquired substantially all of the properties of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any three-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) Interest paid or incurred,

(ii) Depreciation or amortization allowed under this part,

(iii) Liability for tax under this part, and

(iv) Distributions to which Section 301(c)(1) of the Internal Revenue Code, relating to property distributions, applies (other than such distributions from the acquired to the issuing corporation), and reduced to an annual average for such three-year period pursuant to regulations prescribed by the Franchise Tax Board. Such regulations shall include rules for cases where any corporation was not in existence for all of such three-year period or such period includes only a portion of a taxable year of any corporation.

(4) The term ''annual interest to be paid or incurred'' means—

(A) If subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) If projected earnings are determined under clause (ii) of subparagraph (A) of paragraph (3), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) With respect to any corporation which is a bank or is primarily engaged in a lending or finance business—

(A) In determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) In determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in subparagraph (B) of paragraph (4) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) In determining under subparagraph (B) of paragraph (3), the average annual earnings, the amount of the earnings and profits for the three-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term ''lending or finance business'' means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) In applying this section—

(1) The deduction of interest on any obligation shall not be disallowed under subdivision (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of paragraph (4) of subdivision (b) results in such obligation being corporate acquisition indebtedness.

(2) Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subparagraph (A) of paragraph (3) of subdivision (c) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subparagraph (A) of paragraph (3) of subdivision (c) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any three consecutive taxable years thereafter if paragraph (4) of subdivision (b) were applied as of the close of each of such three years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such three consecutive taxable years.

(5) In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in Section 24564) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subdivision (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in Section 24564) of such corporation.

(f) For purposes of this section, the term ''corporate acquisition indebtedness'' does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the three-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Franchise Tax Board, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subdivision) shall be included in the determinations required under subparagraphs (A) and (B) of paragraph (4) of subdivision (b) as of any

day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under paragraph (3) of subdivision (c), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of this section, the term ''affiliated group'' has the meaning assigned to such term by Section 1504 of the Internal Revenue Code except that all corporations other than the acquired corporation shall be treated as includable corporations and the acquired corporation shall not be treated as an includable corporation.

(h) For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this part.

(j) This section shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after December 31, 1970.

SEC. 170. Section 24442.5 of the Revenue and Taxation Code is amended to read:

24442.5. Section 280H of the Internal Revenue Code, relating to limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years, shall apply to taxable years beginning on or after January 1, 1989, except as otherwise provided.

SEC. 171. Section 24448 of the Revenue and Taxation Code is amended to read:

24448. (a) Notwithstanding any other provisions in this part, in the case of a taxpayer who owns real property and has either failed to provide the information required pursuant to Section 18642 or has provided information which is either false, misleading, or incomplete in the information return required pursuant to Section 18642, no deduction for interest, taxes, depreciation, or amortization under Section 24343, 24344, 24345, 24349, or 24354.2 shall be allowed which relate to that real property, as provided in subdivision (b).

(b) No deduction shall be allowed for the items provided in subdivision (a) from 60 days after the due date for filing the information return required pursuant to Section 18642 until the date the Franchise Tax Board determines that all provisions of Section 18642 have been complied with.

(c) In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of one-twelfth for each full month during the period of noncompliance.

SEC. 172. Section 24602 of the Revenue and Taxation Code is amended to read:

24602. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any California qualified stock option that is granted to an individual whose earned income from the corporation granting the California qualified stock option for the taxable year in which that option is exercised does not exceed forty thousand dollars ($40,000). In the event that the option does not meet the necessary qualifications, the option shall be treated as a nonqualified stock option.

(b) For purposes of this section, ''California qualified stock option'' means a stock option that is issued and exercised pursuant to this section and that is designated by the corporation issuing the option as a California qualified stock option at the time the option is granted.

(c) (1) This section shall apply only to those stock options that are issued on or after January 1, 1997, and before January 1, 2002, by a corporation to its employee and are exercised by the employee, while employed by the corporation that issued those stock options (or within three months thereof, or within one year thereof if permanently and totally disabled as defined in Section 22(e)(3) of the Internal Revenue Code), during the taxable year with respect to any class of shares, or combination thereof, issued by the corporation, to the extent that the number of shares transferable by the exercise of the options does not exceed a total of 1,000 and have a combined fair market value of less than one hundred thousand dollars ($100,000). The combined fair market value of any stock shall be determined as of the time the option with respect to that stock is granted.

(2) Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(d) In the case of a California qualified stock option, no amount shall be included in the gross income of the employee until the time of the disposition of the option (or the stock acquired upon exercise of the option). No deduction shall be allowed under Section 162 of the Internal

Revenue Code to the employer on the grant or exercise of a California qualified stock option.

(e) Subdivision (d) shall not apply to any stock option for which an election has been made under Section 83(b) of the Internal Revenue Code, relating to election to include in gross income in year of transfer.

SEC. 173. Section 24611 of the Revenue and Taxation Code is amended to read:

24611. (a) Section 404(k) of the Internal Revenue Code, relating to dividends paid deduction, shall apply to taxable years beginning on or after January 1, 1995.

(b) For taxable years beginning on or after January 1, 1998, Section 404(a)(9) of the Internal Revenue Code, relating to certain contributions to employee ownership plans, is modified to provide that Section 404(a)(9) of the Internal Revenue Code shall not apply to an ''S corporation.''

(c) For taxable years beginning on or after January l, 1998, Section 404(k)(1) of the Internal Revenue Code, relating to deduction for dividends on certain employer securities, is modified to provide that the phrase ''a corporation'' shall read ''a C corporation.''

SEC. 174. Section 24631 of the Revenue and Taxation Code is amended to read:

24631. (a) (1) For taxable years beginning prior to January 1, 2000, income shall be computed on the basis of the taxpayer's income year.

(2) For taxable years beginning on or after January 1, 2000 (other than the first taxable year beginning on or after that date), income shall be computed on the basis of the taxpayer's taxable year.

(3) As provided in paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, for the first taxable year beginning on or after January 1, 2000, income shall be computed on the basis of both the preceding income year and the current taxable year.

(b) For purposes of this part, the term ''income year'' or ''taxable year'' (as applicable) means—

(1) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) The calendar year, if subsection (g) applies; or

(3) The period for which the return is made, if a return is made for a period of less than 12 months.

(c) For purposes of this part, the term ''annual accounting period'' means the annual period on the basis of which the taxpayer regularly computes its income in keeping its books.

(d) For purposes of this part, the term ''calendar year'' means a period of 12 months ending on December 31st.

(e) For purposes of this part, the term ''fiscal year'' means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f), the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) (1) A taxpayer who, in keeping its books, regularly computes its income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) On whatever date such same day of the week last occurs in a calendar month, or

(B) On whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute its income for purposes of this part on the basis of such annual period. This paragraph shall apply to taxable years ending after December 31, 1954.

(2) (A) In any case in which the effective date or the applicability of any provision of this part is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall be treated—

(i) As beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) As ending with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be.

(B) In the case of a change from or to a taxable year described in paragraph (1)—

(i) If such change results in a short period (within the meaning of Section 24634) of 359 days or more, or less than seven days, Section 24636 shall not apply;

(ii) If such change results in a short period of less than seven days, such short period shall, for purposes of this part, be added to and deemed a part of the following taxable year; and

(iii) If such change results in a short period to which Section 24634 applies, the income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying such income by 365 and dividing the result by the number of days in a short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) The Franchise Tax Board shall prescribe such regulations as it deems necessary for the application of this subsection.

(g) Except as provided in Section 24634 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) The taxpayer keeps no books;

(2) The taxpayer does not have an annual accounting period; or

(3) The taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

SEC. 175. Section 24632 of the Revenue and Taxation Code is amended to read:

24632. The taxable year of a taxpayer may not be different than the taxable year used for purposes of the Internal Revenue Code, unless initiated or approved by the Franchise Tax Board, or otherwise required under Section 24634.

SEC. 176. Section 24633 of the Revenue and Taxation Code is amended to read:

24633. If a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Franchise Tax Board. For purposes of this part, if a taxpayer to whom Section 24631(g) applies adopts an annual accounting period (as defined in Section 24631(c)) other than a calendar year, the taxpayer shall be treated as having changed its annual accounting period.

SEC. 177. Section 24633.5 of the Revenue and Taxation Code is amended to read:

24633.5. (a) In the case of any ''S corporation'' or personal service corporation required to change its accounting period by the federal Tax Reform Act of 1986 (Public Law 99-514) as modified by Section 10206 of Public Law 100-203 and Section 1008(e) of Public Law 100-647, that change shall be treated as initiated by the ''S corporation'' or personal service corporation with the consent of the Franchise Tax Board.

(b) With respect to any beneficiary, partner, or shareholder which is required to include the items from more than one taxable year of the trust, partnership, or corporation in any one taxable year, any income in excess of expenses for the short taxable year resulting from the change described in subdivision (a) or subdivision (a) of Section 17551.5 shall be taken into account ratably in each of the first four taxable years beginning after December 31, 1986, unless the beneficiary, partner, or shareholder elects to include all that income in the beneficiary's, partner's, or shareholder's taxable year with or within which the trust's, partnership's, or corporation's short taxable year ends.

(c) The spreading of income over four years, as allowed by subdivision (b), shall not apply unless the taxpayer receives similar treatment for federal income tax purposes.

(d) For taxable years beginning on or after January 1, 1987, each of the following shall apply:

(1) The adjusted basis of any partner's interest in a partnership or shareholder's stock in an ''S corporation'' shall be determined as if all

of the income to be taken into account ratably in the four taxable years referred to in subdivision (b) were included in gross income for the first of those taxable years.

(2) If any interest in a partnership or stock in an ''S corporation'' is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under subdivision (b) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term ''spread period'' means the period consisting of the four taxable years referred to in subdivision (b).

SEC. 178. Section 24634 of the Revenue and Taxation Code is amended to read:

24634. (a) A return for a period of less than 12 months (referred to in this article as ''short period'') shall be made under any of the following circumstances:

(1) When the taxpayer, with the approval of the Franchise Tax Board, changes its annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) When the taxpayer is in existence during only part of what would otherwise be its taxable year, except if the taxpayer's existence terminates as a result of a reorganization described in Section 368(a)(1)(F) of the Internal Revenue Code.

(3) When the Franchise Tax Board terminates the taxpayer's taxable year under Sections 19081 and 19082 (relating to tax in jeopardy).

(4) When the taxpayer is required to make a federal return for a period of less than 12 months.

(b) This section shall apply whether or not a federal return is required to be filed for a period of less than 12 months.

(c) If a return is required to be filed under this section for a period of less than 12 months, that period shall be deemed to be a taxable year.

SEC. 179. Section 24636 of the Revenue and Taxation Code is amended to read:

24636. (a) If a separate return is made by a taxpayer subject to the tax imposed by Chapter 2, under Section 24634 on account of a change in the accounting period the net income, computed on the basis of the period for which the separate return is made, referred to in this section as ''the short period,'' shall be placed on an annual basis by multiplying the amount thereof by 12, and dividing by the number of months in the short period. The Franchise Tax Board shall compute the amount of a tax on the income placed on such annual basis, and shall allow the offset

provided for in Article 3 of Chapter 2, from such tax. The tax due under this section, which shall not be subject of offset, shall be such part of the tax, less the offset allowed, computed on such annual basis as the number of months in the short period is of 12 months.

(b) If a taxpayer subject to the tax imposed by Chapter 2 establishes the amount of its net income for the period of 12 months beginning with the first day of the short period, computed as if such 12-month period were a taxable year, under the law applicable to such year, then the tax for the short period shall be reduced to an amount which is such part of the tax computed on the net income for such 12-month period as the net income computed on the basis of the short period is of the net income for the 12-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this section. If the taxpayer has disposed of substantially all its assets prior to the end of such 12-month period, then in lieu of the net income for such 12-month period there shall be used for the purposes of this section the net income for the 12-month period ending with the last day of the short period. The tax computed under this section shall in no case be less than the tax computed on the net income for the short period without placing such net income on an annual basis. The benefits of this section shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require (but not after the time prescribed for the filing of the return for the first taxable year which ends on or after 12 months after the beginning of the short period), makes application therefor in accordance with such regulations. Such application, in case the return was filed without regard to this section, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this section. The Franchise Tax Board shall prescribe such regulations as it may deem necessary for the application of this section.

(c) In the case of a taxpayer required to file a short period return pursuant to Section 24634, the alternative minimum tax shall be determined in accordance with Section 443(d) of the Internal Revenue Code.

SEC. 180. Section 24637 of the Revenue and Taxation Code is amended to read:

24637. For taxable years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, relating to election of taxable year other than required taxable year, shall be applicable, except that Section 444(c)(1), relating to effect of election, shall not apply.

SEC. 181. Section 24654 of the Revenue and Taxation Code is amended to read:

24654. (a) Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.

(b) For purposes of applying Section 448 of the Internal Revenue Code, Sections 801(d)(2), 801(d)(3), and 801(d)(5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1987.

SEC. 182. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Sections 453, 453A, and 453B of the Internal Revenue Code, relating to installment method, special rules for nondealers, and gain or loss on disposition of installment obligations, respectively, shall apply, except as otherwise provided.

(2) Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1988.

(3) Section 812 of Public Law 99-514, relating to the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under former Section 24667 or 24668 for the taxpayer's last taxable year beginning before January 1, 1988, the provisions of this section shall be treated as a change in method of accounting for the first taxable year beginning after December 31, 1987, and all of the following shall apply:

(1) That change shall be treated as initiated by taxpayer.

(2) That change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The period for taking into account adjustments under Article 6 (commencing with Section 24721) by reason of that change shall not exceed four years.

(d) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions on or after January 1, 1990, in taxable years beginning on or after January 1, 1990.

(e) (1) In the case of any installment obligations to which Section 453(*l*)(2)(B) of the Internal Revenue Code applies, in lieu of the

provisions of Section 453(*l*)(3)(A) of the Internal Revenue Code, the ''tax'' (as defined by subdivision (a) of Section 23036) for any taxable year for which payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(*l*)(3)(B) of the Internal Revenue Code.

(2) Sections 10202 and 10204 of Public Law 100-203, are modified to provide for each of the following:

(A) Section 10202 shall apply to dispositions in taxable years beginning on or after January 1, 1990.

(B) Section 10204 shall apply to costs incurred in taxable years beginning on or after January 1, 1990.

(C) Any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(i) Fifty percent in the first taxable year beginning on or after January 1, 1990.

(ii) Fifty percent in the second taxable year beginning on or after January 1, 1990.

(f) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the taxable year, in lieu of the provisions of Section 453A(c)(1) of the Internal Revenue Code, the ''tax'' (as defined by subdivision (a) of Section 23036) for the taxable year shall be increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 23151, 23186, or 23802, whichever applies, in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SEC. 183. Section 24673.2 of the Revenue and Taxation Code is amended to read:

24673.2. (a) Section 460 of the Internal Revenue Code, relating to special rules for long-term contracts, shall apply, except as otherwise provided.

(b) (1) Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall apply to taxable years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.

(c) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100-203, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after October 13, 1987, during a taxable year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(d) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 5041 of Public Law 100-647, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after June 20, 1988, during a taxable year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(e) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 7621 of Public Law 101-239, relating to the repeal of the completed contract method of accounting for long-term contracts, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after July 10, 1989, during a taxable year beginning on or before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(f) For purposes of applying paragraphs (2) to (6), inclusive, of Section 460(b) of the Internal Revenue Code, relating to the look-back method, any adjustment to income computed under paragraph (2) of subdivision (b), (c), (d), or (e) shall be deemed to have been reported in the taxable year from which the adjustment arose, rather than the taxable year in which the contract was completed.

SEC. 184. Section 24674 of the Revenue and Taxation Code is amended to read:

24674. (a) If, in the case of a taxpayer owning any non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing its income) constitute income to it in such year, such taxpayer may, at its election made in its return for any taxable year, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by it and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Franchise Tax Board permits it, subject to such conditions as the Franchise Tax Board deems necessary, to change to a different method.

(b) In the case of any obligation—

(1) Of the United States; or

(2) Of a state, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia, which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

SEC. 185. Section 24675 of the Revenue and Taxation Code is amended to read:

24675. If an amount representing compensatory damages is received or accrued by a taxpayer during a taxable year as the result of an award in a civil action for infringement of a patent issued by the United States, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month during which such infringement occurred.

SEC. 186. Section 24676 of the Revenue and Taxation Code is amended to read:

24676. (a) Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists.

(b) In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includable in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to be subject to tax measured by net income imposed under Chapter 2 (commencing at Section 23101) or Chapter 3 (commencing at Section 23501) of this part, then so much of such income as was not includable in gross income under subsection (a) for preceding taxable years shall be included in the measure of tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part.

(c) (1) This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Franchise Tax Board may by regulations prescribe. No election may be made with respect to a trade or business if in computing net income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Franchise Tax Board, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) (A) A taxpayer may, with the consent of the Franchise Tax Board, make an election under this section at any time.

(B) A taxpayer may, without the consent of the Franchise Tax Board, make an election under this section for his first taxable year (i) which begins after December 31, 1960, and (ii) in which it receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Franchise Tax Board to the revocation of such election. For purposes of this part, the computation of net income under an election made under this section shall be treated as a method of accounting.

(d) For purposes of this section—

(1) The term ''prepaid subscription income'' means any amount (includable in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) The term ''liability'' means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Prepaid subscription income shall be treated as received during the taxable year for which it is includable in gross income under Section 24661 (without regard to this section).

(e) Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this part applies in accordance with such method or practice.

SEC. 187. Section 24676.5 of the Revenue and Taxation Code is amended to read:

24676.5. (a) A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) For purposes of this section—

(1) The term ''magazine'' includes any other periodical.

(2) The term ''paperback'' means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) The term ''record'' means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) A sale of a magazine, paperback, or record is a qualified sale if—

(A) At the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

(B) The sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

(6) The amount excluded under this section with respect to any qualified sale shall be the lesser of—

(A) The amount covered by the legal obligation described in paragraph (5)(A), or

(B) The amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(7) (A) Except as provided in subparagraph (B), the term ''merchandise return period'' means, with respect to any taxable year—

(i) In the case of magazines, the period of 2 months and 15 days first occurring after the close of the taxable year, or

(ii) In the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

(B) The taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

(8) As prescribed by the Franchise Tax Board, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subdivision (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

(A) Is in the possession of the taxpayer at the close of the merchandise return period, and

(B) Is satisfactory to the Franchise Tax Board.

(9) A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

(c) (1) This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Franchise Tax Board. The election shall be made in such manner as the Franchise Tax Board may prescribe and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

(3) An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Franchise Tax Board to the revocation of such election.

(4) Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) In applying Section 24723 with respect to any election under this section which applies to magazines, the period of taking into account any decrease in taxable income resulting from the application of subdivision (b) of Section 24721 shall be the taxable year for which the election is made and the four succeeding taxable years.

(e) (1) In the case of any election under this section which applies to paperbacks or records, in lieu of applying Sections 24721 through 24725, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the three immediately preceding taxable years if this section had applied to such preceding three taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

(3) At the close of each taxable year the suspense account shall be—

(A) Reduced by the excess (if any) of—

(i) The opening balance of the suspense account for the taxable year, over

(ii) The amount excluded from gross income for the taxable year under subdivision (a), or

(B) Increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) The amount excluded from gross income for the taxable year under subdivision (a), over

(ii) The opening balance of the account for the taxable year.

(4) (A) In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

(B) In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subdivision (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) The application of this subdivision with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of Chapter 8 shall be determined as prescribed by the Franchise Tax Board.

(6) The amendments to this section made by the 1979–80 Regular Session of the Legislature shall apply to taxable years beginning on or after October 1, 1979.

SEC. 188. Section 24677 of the Revenue and Taxation Code is amended to read:

24677. (a) If an amount representing damages is received or accrued by a corporation during a taxable year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross income for the taxable year of that part of the amount that would have been received or accrued by the corporation in a prior taxable year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes that would have resulted had that part been included in gross income for that prior taxable year or years.

(b) A corporation in computing the tax shall be entitled to deduct all credits and deductions for depletion, depreciation, and other items to which it would have been entitled, had the income been received or accrued by the corporation in the year during which it would have received or accrued it, except for the breach of contract or for the breach of fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the corporation's share of income from the actual operation of the property.

(c) Subdivision (a) shall not apply unless the amount representing damage is three thousand dollars ($3,000) or more.

SEC. 189. Section 24678 of the Revenue and Taxation Code is amended to read:

24678. (a) If an amount representing damages is received or accrued during a taxable year as a result of an award in, or settlement of, a civil action brought under Section 4 of the act entitled ''An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,'' approved October 15, 1914 (commonly known as the Clayton Act), for injuries sustained by a corporation in its business or property by reason of anything forbidden in the antitrust laws, then the tax attributable to the inclusion of that amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if that amount had been included in

gross income in equal installments for each month during the period in which the injuries were sustained by the corporation.

(b) This section shall apply to taxable years ending after June 23, 1961, but only with respect to amounts received or accrued after that date as a result of awards or settlements made after that date.

SEC. 190. Section 24685 of the Revenue and Taxation Code is amended to read:

24685. (a) In the case of any taxpayer who elected to have former Section 24685 apply for that taxpayer's last taxable year beginning prior to January 1, 1990, and who is required to change its method of accounting by reason of the amendments made by the act adding this section, each of the following shall apply:

(1) The change shall be treated as initiated by the taxpayer.

(2) The change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The net amount of adjustments required by Chapter 13 (commencing with Section 24631) to be taken into account by the taxpayer:

(A) Shall be reduced by the balance in the suspense account, under former Section 24685 as of the close of the last taxable year beginning before January 1, 1990, and

(B) Shall be taken into account over the two taxable year period beginning with the taxable year following that last taxable year, as follows:

In the case of the:	The percentage to be taken into account is:
1st Year	50
2nd Year	50

(b) Notwithstanding subparagraph (B) of paragraph (3) of subdivision (a), if the period during which the adjustments are required to be taken into account under Chapter 13 (commencing with Section 24631) is less than two years, those adjustments shall be taken into account ratably over the shorter period.

SEC. 191. Section 24690 of the Revenue and Taxation Code is amended to read:

24690. (a) The provisions of Section 468A of the Internal Revenue Code, relating to special rules for nuclear decommissioning costs, shall be applicable, except as otherwise provided.

(b) The deduction allowed for the 1987 taxable year may include contributions to a fund that are required to bring the balance in that fund up to the balance it would have contained if allowable contributions had been made for the 1985 and 1986 taxable years.

(c) The provisions of Section 468A(e)(2) of the Internal Revenue Code, which impose a tax upon the gross income of the Nuclear Decommissioning Reserve Fund, shall be modified for purposes of this part to provide that a tax shall be imposed upon the gross income of that fund for any taxable year at a rate equal to the rate in effect for that taxable year under Section 23501. The income tax imposed upon the gross income of the fund by this section is in lieu of any other tax imposed by this part or Part 10 (commencing with Section 17001) upon or measured by that income.

SEC. 192. Section 24692 of the Revenue and Taxation Code is amended to read:

24692. (a) Section 469 of the Internal Revenue Code, relating to passive activity losses and credits limited, shall apply, except as otherwise provided.

(b) Section 469(c)(7) of the Internal Revenue Code, relating to special rules for taxpayers in real property business, shall not apply.

(c) Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, is modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 23609.

(2) The credit for clinical testing expenses allowed by Section 23609.5.

(3) The credit for low-income housing allowed by Section 23610.5.

(4) The credit for certain wages paid (targeted jobs) allowed by Section 23621.

(d) Section 469(g)(1)(A) of the Internal Revenue Code is modified to provide that if all gain or loss realized on the disposition of the taxpayer's entire interest in any passive activity (or former passive activity) is recognized, the excess of—

(1) The sum of—

(A) Any loss from that activity for that taxable year (determined after application of Section 469(b) of the Internal Revenue Code), plus

(B) Any loss realized on that disposition, over

(2) Net income or gain for the taxable year from all passive activities (determined without regard to losses described in paragraph (1)), shall be treated as a loss which is not from a passive activity.

(e) For purposes of applying Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 23610.5 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(f) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(g) For each taxable year beginning on or after January 1, 1987, Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall apply, except as otherwise provided.

(h) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of section in case of publicly traded partnerships, shall apply to each taxable year beginning on or after January 1, 1990, except as otherwise provided.

SEC. 193. Section 24710 of the Revenue and Taxation Code is amended to read:

24710. (a) For each taxable year beginning on or after January 1, 1997, Section 475 of the Internal Revenue Code, relating to mark to market accounting method for securities dealers, shall apply, except as otherwise provided.

(b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to the effective date for changes in the mark to market accounting method for securities dealers, is modified to provide that the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the five-taxable-year period beginning with the first taxable year beginning on or after January 1, 1997.

(c) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 475(e) of the Internal Revenue Code, relating to election of mark to market for dealers in commodities, to have Section 475 of the Internal Revenue Code apply, Section 475 of the Internal Revenue Code shall apply to that dealer in commodities for state purposes, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5, and the federal election shall be binding for purposes of this part.

(2) If a taxpayer fails to make, or has not previously made, an election for federal purposes under Section 475(e) of the Internal Revenue Code, relating to election of mark to market for dealers in commodities, to have Section 475 of the Internal Revenue Code apply, an election under Section 475(e) of the Internal Revenue Code shall not be allowed for state purposes, Section 475 of the Internal Revenue Code shall not apply to that dealer in commodities for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(d) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 475(f)(1) of the Internal Revenue Code, relating to election of mark to market for traders in securities, to have Section 475 of the Internal Revenue Code apply to a trade or business, Section 475 of the Internal Revenue Code shall apply to that trader in securities for

state purposes with respect to that trade or business, a separate election for state purposes with respect to that trade or business shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5, and the federal election shall be binding for purposes of this part.

(2) If a taxpayer fails to make, or has not previously made, an election for federal purposes under Section 475(f)(1) of the Internal Revenue Code, relating to election of mark to market for traders in securities, to have Section 475 of the Internal Revenue Code apply to a trade or business, an election under Section 475(f)(1) of the Internal Revenue Code shall not be allowed for state purposes with respect to that trade or business, Section 475 of the Internal Revenue Code shall not apply to that trader in securities for state purposes with respect to that trade or business, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(e) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 475(f)(2) of the Internal Revenue Code, relating to election of mark to market for traders in commodities, to have Section 475 of the Internal Revenue Code apply to a trade or business, Section 475 of the Internal Revenue Code shall apply to that trader in commodities for state purposes with respect to that trade or business, a separate election for state purposes with respect to that trade or business shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5, and the federal election with respect to that trade or business shall be binding for purposes of this part.

(2) If a taxpayer fails to make, or has not previously made, an election for federal purposes under Section 475(f)(2) of the Internal Revenue Code, relating to election of mark to market for traders in commodities, to have Section 475 of the Internal Revenue Code apply to a trade or business, an election under Section 475(f)(2) of the Internal Revenue Code shall not be allowed for state purposes with respect to that trade or business, Section 475 of the Internal Revenue Code shall not apply to that trader in commodities for state purposes with respect to that trade or business, and a separate election for state purposes with respect to that trade or business shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(f) (1) An election under Section 475(e) or (f) of the Internal Revenue Code made for federal purposes with respect to a taxable year beginning before January 1, 1998, shall be treated as having been made for state purposes with respect to the first taxable year beginning on or after January 1, 1998.

(2) Section 1001(d)(4)(B) of the Taxpayer Relief Act of 1997 (P.L. 105-34), relating to the effective date for election of mark to market by securities traders and traders and dealers in commodities, is modified to provide that the requirement for timely identification shall be treated as

timely made for state purposes if that identification is treated as timely made for federal purposes, and the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the four-taxable-year period beginning with the first taxable year beginning on or after January 1, 1998.

SEC. 194. Section 24871 of the Revenue and Taxation Code is amended to read:

24871. (a) (1) Section 852(b)(1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, shall not apply.

(2) Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its ''net income'' shall be equal to its ''investment company income,'' as defined in subdivision (b).

(b) ''Investment company income'' means investment company taxable income, as defined in Section 852(b)(2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b)(2)(A) of the Internal Revenue Code, relating to an exclusion for net capital gain, shall not apply.

(2) Section 852(b)(2)(B) of the Internal Revenue Code, relating to net operating losses, is modified to deny the deduction allowed under Sections 24416 and 24416.1, in lieu of denying the deduction allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b)(2)(C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(4) The deduction for dividends paid, under Section 852(b)(2)(D) of the Internal Revenue Code, is modified to allow capital gain dividends and exempt interest dividends (to the extent that interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b)(3)(A) of the Internal Revenue Code, relating to capital gains, shall not apply.

(d) Section 852(b)(5)(B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, shall not apply.

(e) Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment companies, is modified to refer to Section 24402, in lieu of Section 243 of the Internal Revenue Code.

(f) The amendments made to this section by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1993.

SEC. 195. Section 24871.5 of the Revenue and Taxation Code is amended to read:

24871.5. (a) Section 851(b)(3) of the Internal Revenue Code shall not apply.

(b) This section shall apply in determining whether an entity qualifies as a regulated investment company for taxable years of that entity beginning after August 5, 1997.

(c) This section shall not apply to taxable years beginning on or after January 1, 1998.

SEC. 196. Section 24872.4 of the Revenue and Taxation Code is amended to read:

24872.4. (a) Section 856(d)(7)(C)(ii) of the Internal Revenue Code is modified by substituting the phrase ''if received by an organization described in subdivision (b) of Section 17651 of Part 10 or Section 23731'' for the phrase ''if received by an organization described in section 511(a)(2).''

(b) (1) An election under Section 856(e)(5) of the Internal Revenue Code for federal purposes shall be treated for purposes of this part as an election made by the real estate investment trust under Section 856(e)(5) of the Internal Revenue Code for state purposes and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(2) Any revocation of an election under Section 856(e)(5) of the Internal Revenue Code for federal purposes shall be treated for purposes of this part as a revocation of the election made by the real estate investment trust under Section 856(e)(5) of the Internal Revenue Code for state purposes and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed with respect to the property for any subsequent taxable year.

(3) If the real estate investment trust fails to make an election under Section 856(e)(5) of the Internal Revenue Code for federal purposes with respect to any property, that property shall not be treated for purposes of this part as foreclosure property, an election under Section 856(e)(5) of the Internal Revenue Code for state purposes with respect to that property shall not be allowed, and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed with respect to that property.

(c) This section shall apply to taxable years beginning after August 5, 1997.

(d) 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. 197. Section 24872.5 of the Revenue and Taxation Code is amended to read:

24872.5. (a) Section 856(c)(4) of the Internal Revenue Code shall not apply.

(b) (1) Section 856(c)(6)(G) of the Internal Revenue Code shall not apply and in lieu thereof paragraph (2) shall apply.

(2) Except to the extent provided by regulations of the Secretary of the Treasury under Section 856(c)(5)(G) of the Internal Revenue Code (as redesignated and amended by Public Law 105-34), both of the following shall be treated as income qualifying under Section 856(c)(2) of the Internal Revenue Code:

(A) Any payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.

(B) Any gain from the sale or other disposition of any such investment.

(c) This section shall apply in determining whether an entity qualifies as a real estate investment trust for taxable years of that entity beginning after August 5, 1997.

(d) This section shall not apply to taxable years beginning on or after January 1, 1998.

SEC. 198. Section 24872.7 of the Revenue and Taxation Code is amended to read:

24872.7. (a) (1) (A) Whenever a penalty is imposed for federal purposes under Section 857(f)(2)(A) or (B) of the Internal Revenue Code, whichever is applicable, it shall be deemed that the real estate investment trust has failed to comply with the requirements of Section 857(f)(2)(A) or (B) of the Internal Revenue Code, whichever is applicable, for state purposes for that taxable year and a penalty equal to the penalty determined for federal purposes under Section 857(f)(2)(A) or (B) of the Internal Revenue Code, whichever is applicable, shall be imposed and shall be paid on notice and demand and in the same manner as tax.

(B) No penalty shall be imposed under this paragraph if the Secretary of the Treasury, under Section 857(f)(2)(D) of the Internal Revenue Code, has determined that the failure to comply is due to reasonable cause and not to willful neglect.

(2) (A) Whenever a penalty is imposed for federal purposes under Section 857(f)(2)(C) of the Internal Revenue Code it shall be deemed that the real estate investment trust has failed to comply with the requirements of Section 857(f)(2)(C) of the Internal Revenue Code for state purposes for that taxable year and an additional penalty equal to the penalty determined for federal purposes under Section 857(f)(2)(C) of

the Internal Revenue Code shall be imposed and shall be paid on notice and demand and in the same manner as tax.

(B) No penalty shall be imposed under this paragraph if the Secretary of the Treasury, under Section 857(f)(2)(D) of the Internal Revenue Code, has determined that the failure to comply is due to reasonable cause and not to willful neglect.

(b) This section shall apply to taxable years beginning after August 5, 1997.

(c) 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. 199. Section 24905.5 of the Revenue and Taxation Code is amended to read:

24905.5. For each taxable year beginning on or after January 1, 1997, the amendments made to Section 988 of the Internal Revenue Code by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to mark to market accounting method for securities dealers, shall apply.

SEC. 200. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the taxable year or any prior taxable year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3 (commencing with Section 23501), to the extent sustained prior to

January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3 (commencing with Section 23501), in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the taxable year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the taxable year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the corporation's taxes under this part, but not less than the amounts allowable under that section for the taxable year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to taxable year.

(j) In the case of property the acquisition of which resulted under Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in Section 1044(d) of the Internal Revenue Code, relating to basis adjustments.

SEC. 201. Section 24918 of the Revenue and Taxation Code is amended to read:

24918. (a) Section 1017 of the Internal Revenue Code, relating to discharge of indebtedness, shall apply, except as otherwise provided. References to affiliated groups which file a consolidated return under Section 1501 of the Internal Revenue Code shall be treated as meaning members of the same unitary group which file a combined report under Article 1 (commencing with Section 25101) of Chapter 17.

(b) The amendments to Section 1017 of the Internal Revenue Code made by Section 13150 of the Revenue and Reconciliation Act of 1993 (Public Law 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 202. Section 24943 of the Revenue and Taxation Code is amended to read:

24943. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(a) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(b) Into money, and the disposition of the converted property occurred before January 1, 1953, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the Franchise Tax Board, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in

the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For purposes of this subsection and Section 24944, the term ''disposition of the converted property'' means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

For purposes of this section and Section 24944, the term ''control'' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

SEC. 203. Section 24944 of the Revenue and Taxation Code is amended to read:

24944. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in subdivision (b) of Section 24943) occurred after December 31, 1952, the gain (if any) shall be recognized except to the extent hereinafter provided in this section:

(a) If the taxpayer during the period specified in subdivision (b), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe. For purposes of this subdivision—

(1) No property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(2) The taxpayer shall be considered to have purchased property or stock only if, but for the provisions of Section 24947, the unadjusted basis of such property or stock would be its cost within the meaning of Section 24912.

(b) The period referred to in subdivision (a) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(1) Two years after the close of the first taxable year in which any part of the gain upon the conversion is realized; or

(2) Subject to such terms and conditions as may be specified by the Franchise Tax Board, at the close of such later date as the Franchise Tax Board may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe.

(c) For purposes of this section and Section 24943, replacement property ''similar or related in service or use'' shall include, in the case of a nonprofit water utility corporation, personal property used for the transmission or storage of water.

SEC. 204. Section 24945 of the Revenue and Taxation Code is amended to read:

24945. If a taxpayer has made the election provided in Section 24944(a), then—

(a) The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of four years from the date the Franchise Tax Board is notified by the taxpayer (in such manner as the Franchise Tax Board may by regulations prescribe) of the replacement of the converted property or of an intention not to replace; and

(b) Such deficiency may be assessed before the expiration of such four-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

SEC. 205. Section 24946 of the Revenue and Taxation Code is amended to read:

24946. If the election provided in Section 24944(a) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of Section 19057 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

SEC. 206. Section 24949.1 of the Revenue and Taxation Code, as amended by Section 98 of Chapter 322 of the Statutes of 1998, is amended to read:

24949.1. (a) Section 1033(e) of the Internal Revenue Code, relating to livestock sold on account of drought, is modified by substituting the phrase ''on account of drought, flood, or other weather-related conditions'' in lieu of the phrase ''on account of drought'' contained therein.

(b) This section shall apply to sales and exchanges after December 31, 1996.

(c) This section shall not apply to taxable years beginning on or after January 1, 1998.

SEC. 207. Section 24952 of the Revenue and Taxation Code is amended to read:

24952. (a) If—

(1) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subdivisions (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) (1) In the case of a reacquisition of real property to which subdivision (a) applies, gain shall result from such reacquisition to the extent that—

(A) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) The amount of the gain on the sale of such property included in the measure of tax or returned as income for periods prior to such reacquisition.

(2) The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after December 31, 1964, shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) The amount of the gain on the sale of such property included in the measure of tax or returned as income for periods prior to the reacquisition of such property, and

(B) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Except as provided in this section, the gain determined under this subdivision resulting from a reacquisition to which subdivision (a) applies shall be recognized, notwithstanding any other provision of this part.

(c) If subdivision (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) The amount of the gain determined under subdivision (b) resulting from such reacquisition, and

(2) The amount described in subparagraph (B) of paragraph (2) of subdivision (b).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) If, prior to a reacquisition of real property to which subdivision (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

SEC. 208. Section 24954 of the Revenue and Taxation Code is amended to read:

24954. For taxable years beginning on or after January 1, 1995, Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply, except as otherwise provided.

SEC. 209. Section 24955 of the Revenue and Taxation Code is amended to read:

24955. (a) No gain shall be recognized with respect to a sale of an assisted housing development to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the assisted housing development affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, whichever is greater, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(b) No gain shall be recognized with respect to a sale of a majority or more of units in an assisted housing development converted to condominium interests, to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the condominiums affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale. This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(c) No gain shall be recognized with respect to a sale of real property to a majority or more of existing lower income and very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(d) No gain shall be recognized with respect to a sale of a majority or more of units converted to condominium interests to the existing lower income or very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(e) For purposes of this section:

(1) ''Assisted housing development'' means a multifamily rental housing development that receives federal government assistance, appearing of record and containing a legal description of the property, as defined in subdivision (a) of Section 65863.10 of the Government Code.

(2) ''Tenant association'' means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization; or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development, real property, or condominium and which represents the interests of at least a majority of the tenants in the assisted housing development, real property, or condominium.

(3) ''Nonprofit organization'' means a not-for-profit corporation organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, which has as its principal purpose the ownership, development, or management of housing or community

development projects for persons and families of lower income and very low income, and which has a broadly representative board, a majority of whose members are community-based and has a proven track record of community service.

(4) ''Public agency'' means a housing authority, redevelopment agency, or any other agency of a city, county, or city and county, whether general law or chartered, which is authorized to own, develop, or manage housing or community development projects for persons and families of lower income and very low income.

(5) ''Regional or national organization'' means a not-for-profit, charitable corporation organized on a multicounty, state, or multistate basis which has as its principal purpose the ownership, development, or management of housing or community development projects for persons and families of lower income and very low income.

(6) ''Regional or national agency'' means a multicounty, state, or multistate agency which is authorized to own, develop, or manage housing or community development projects for persons and families of lower income and very low income.

(7) ''Profit-motivated organization or individual'' means an individual or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, which carries on as a business for profit.

(8) ''Lower income'' means those residents having an income as defined by Section 50079.5 of the Health and Safety Code.

(9) ''Very low income'' means those residents having an income as defined by Section 50105 of the Health and Safety Code.

(10) ''Resident'' means a tenant or other person who lawfully occupies a unit located in a qualified low-income housing project as defined under Section 23610.5, and whose income qualifies as lower income or very low income.

(11) ''Condominium'' means the interest in real property defined in Section 783 of the Civil Code.

(f) If the purchase of residential real property results in the nonrecognition of gain on the sale of an assisted housing development, real property, or condominium under subdivision (a), (b), (c), or (d), in determining the adjusted basis of the purchased residential real property as of any time following the sale of the assisted housing development, real property, or condominium, the adjustments to the basis shall include a reduction by an amount equal to the amount of the gain not so recognized on the sale of the assisted housing development, real property, or condominium. If more than one parcel of residential real property has been purchased, the nonrecognized gain from the sale of the

assisted housing development, real property, or condominium shall be attributed to the parcels of residential real property on a pro rata basis based upon the purchase prices of those parcels.

(g) In accordance with subdivision (a), (b), (c), or (d), if the sale of an assisted housing development, real property, or condominium results in a gain during the taxable year, then all of the following shall apply:

(1) The statutory period for the assessment of any deficiency attributable to any part of the gain shall not expire before the expiration of four years from the date the Franchise Tax Board is notified (on the form as the Franchise Tax Board may provide) of one of the following:

(A) The cost of purchasing the residential real property which satisfies the requirement of subdivision (a), (b), (c), or (d), and results in the nonrecognition of gain.

(B) The intention not to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(C) The failure to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(2) The deficiency may be assessed before the expiration of the period specified in paragraph (1), notwithstanding the provisions of any other law or rule of law which would otherwise prevent the assessment.

(3) All information regarding the sale of an assisted housing development, real property, or condominium, at a gain in accordance with subdivision (a), (b), (c), or (d), shall be disclosed in the return for the taxable year in which the sale took place in order to determine if the sale qualifies and the amount of nonrecognition of gain qualifies under subdivision (a), (b), (c), or (d).

(h) The Department of Housing and Community Development shall do all of the following:

(1) Certify that the lower income or very low income resident meets the definitions provided in paragraphs (8) and (9) of subdivision (e).

(2) Provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the Franchise Tax Board and the Department of Housing and Community Development, of the names and identification numbers of the persons who are members of the group of purchasers who are lower income or very low income residents that were issued a certification, and the names and identification numbers of the sellers of the property.

(3) Provide the group of purchasers who are lower income or very low income residents a copy of the certification.

(i) The group of purchasers who are lower income or very low income residents shall do all of the following:

(1) Provide the Department of Housing and Community Development with documents, as deemed necessary by the department, verifying the income of each member of the group.

(2) Provide a copy of the certification to the seller of the assisted housing development, real property, or condominium.

(3) Retain a copy of the certification.

(j) The seller of the assisted housing development, real property, or condominium shall do all of the following:

(1) Obtain a copy of the certification from the group of purchasers who are lower income or very low income residents of the assisted housing development, real property, or condominium.

(2) Retain a copy of the group's lower income or very low income certification for tax purposes.

SEC. 210. Section 24956 of the Revenue and Taxation Code is amended to read:

24956. (a) Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, shall apply, except as otherwise provided.

(b) The provisions of Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, shall not apply to any taxable year (or portion thereof) that those provisions (or similar provisions) are not applicable for federal income tax purposes.

SEC. 211. Section 24990.4 of the Revenue and Taxation Code is amended to read:

24990.4. For taxable years beginning on or after January 1, 1997:

(a) Section 1237(a) of the Internal Revenue Code, relating to real property subdivided for sale, is modified to provide that the term ''other than a corporation'' in the material preceding Section 1237(a)(1) of the Internal Revenue Code shall instead mean ''other than a C corporation.''

(b) Section 1237(a)(2)(A) of the Internal Revenue Code, relating to real property subdivided for sale, is modified to provide that an improvement shall be deemed to be made by the taxpayer if that improvement was made by an ''S corporation'' that included the taxpayer as a shareholder.

SEC. 212. Section 24990.7 of the Revenue and Taxation Code is amended to read:

24990.7. The provisions of Section 1248 of the Internal Revenue Code, relating to gain from certain sales or exchanges of stock in certain foreign corporations, shall not apply to transactions occurring after August 20, 1990, in taxable years beginning on or after January 1, 1990.

SEC. 213. Section 24994 of the Revenue and Taxation Code is amended to read:

24994. Section 1272 of the Internal Revenue Code shall be modified as follows:

(a) For taxable years beginning on or after January 1, 1987, and before the taxable year in which the debt obligation matures or is sold, exchanged, or otherwise disposed, the amount included in gross income under this part shall be the same as the amount included in gross income on the federal tax return.

(b) The difference between the amount included in gross income on the federal return and the amount included in gross income under this part, with respect to obligations issued after December 31, 1984, for taxable years beginning before January 1, 1987, shall be included in gross income in the taxable year in which the debt obligation matures or is sold, exchanged, or otherwise disposed.

(c) A taxpayer may elect, in the form and manner as the Franchise Tax Board may prescribe,

(1) To recognize the difference specified in subdivision (b) ratably in each of the first four taxable years beginning on or after January 1, 1987, rather than at the time the debt obligation matures, is sold, exchanged, or otherwise disposed, or

(2) To apply the provisions of Section 1272 of the Internal Revenue Code to obligations issued on or after the first day of the taxpayer's taxable years beginning on or after January 1, 1987.

(d) Section 1004(b) of the Taxpayer Relief Act of 1997 (P.L. 105-34), relating to the effective date for determination of original issue discount where pooled debt obligations are subject to acceleration, is modified to provide that the changes to Section 1272(a)(6) of the Internal Revenue Code made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998, and the amount taken into account under Section 481 of the Internal Revenue Code shall be taken into account ratably over the four-taxable-year period beginning with the first taxable year beginning on or after January 1, 1998.

SEC. 214. Section 25101.3 of the Revenue and Taxation Code is amended to read:

25101.3. The property factor as it relates to the aircraft of an air carrier or foreign air carrier, as defined in Section 1150, or the operator of an air taxi, as defined in Section 1154, shall be allocated on the basis of a formula consisting of time and arrivals and departures as follows:

(a) The time in state is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent within the state during the taxable year as compared to the total time everywhere during the taxable year. This factor shall be multiplied by 75 percent.

(b) Arrivals and departures is the number of arrivals in and departures from airports within the state of certificated aircraft during the taxable year as compared to the total number of arrivals in and departures from

airports both within this state and elsewhere during the taxable year. This factor shall be multiplied by 25 percent.

(c) The time in state factor shall be added to the arrivals and departures factor.

(d) The figure produced by application of subdivision (c) equals the allocation to be applied to the original cost of property owned or rented by the taxpayer determined under the provisions of Section 25130.

(e) If annual statistics for the taxpayer's taxable year are not available, statistics for representative periods designated by the Franchise Tax Board shall be used provided that permission to do so has been granted to the taxpayer by the Franchise Tax Board.

SEC. 215. Section 25105 of the Revenue and Taxation Code is amended to read:

25105. (a) For purposes of this article, other than Section 25102, the income and apportionment factors of two or more corporations shall be included in a combined report only if the corporations, otherwise meeting the requirements of Section 25101 or 25101.15, are members of a commonly controlled group.

(b) A ''commonly controlled group'' means any of the following:

(1) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if—

(A) The parent owns stock possessing more than 50 percent of the voting power of at least one corporation, and, if applicable,

(B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph.

(2) Any two or more corporations, if stock representing more than 50 percent of the voting power of the corporations is owned, or constructively owned, by the same person.

(3) Any two or more corporations that constitute stapled entities.

(A) For purposes of this paragraph, ''stapled entities'' means any group of two or more corporations if more than 50 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(B) Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

(4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules

of paragraph (1) of subdivision (e)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(c) (1) If, in the application of subdivision (b), a corporation is eligible to be treated as a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only one commonly controlled group. This election shall remain in effect unless revoked with the approval of the Franchise Tax Board.

(2) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subdivision (b) are not met, except as follows:

(A) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subdivision (b) are again met immediately after the sale, exchange, or disposition.

(B) The Franchise Tax Board may treat the commonly controlled group as remaining in place if the conditions of subdivision (b) are again met within a period not to exceed two years.

(d) A taxpayer may exclude some or all corporations included in a ''commonly controlled group'' by reason of paragraph (4) of subdivision (b) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subdivision, the term ''controlled'' includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(e) Except as otherwise provided, stock is ''owned'' when title to the stock is directly held or if the stock is constructively owned.

(1) An individual constructively owns stock that is owned by any of the following:

(A) His or her spouse.

(B) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(C) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(2) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50 percent of the voting power of the corporation.

(3) Stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital

interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) ''Corporation'' means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) ''Person'' means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) ''Voting power'' means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) ''More than 50 percent of the voting power'' means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) ''Stock representing voting power'' includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision (f) as a person.

(4) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(5) Treat holders of a beneficial interest in, or executor or trustee powers over, stock held by an estate or trust as constructively owned by the holder.

(6) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(h) This section shall apply to taxable years beginning on or after January 1, 1995.

SEC. 216. Section 25108 of the Revenue and Taxation Code is amended to read:

25108. (a) For corporations whose income is subject to the provisions of Section 25101 or 25101.15, the net operating loss determined in accordance with Section 172 of the Internal Revenue Code for a particular taxable year shall be the corporation's ''net loss for state purposes'' as defined in subdivision (c).

(b) The net operating loss deduction allowed by Sections 24416, 24416.1, and 24416.2, for a taxable year shall be deducted from ''net income for state purposes'' (as defined in subdivision (c)) for that taxable year.

(c) ''Net income (loss) for state purposes'' means the sum of the net income or loss of that corporation apportionable to this state and the income or loss allocable to this state as nonbusiness income, as provided by Chapter 17 (commencing with Section 25101).

SEC. 217. Section 25110 of the Revenue and Taxation Code is amended to read:

25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in paragraph (2) of subdivision (b), that is subject to the tax imposed under this part, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this part, as modified by this article. A taxpayer that makes a water's-edge election shall take into account the income and apportionment factors of the following affiliated entities only:

(1) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(2) Any corporation (other than a bank), regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(3) Corporations that are incorporated in the United States, excluding corporations making an election pursuant to Sections 931 to 936, inclusive, of the Internal Revenue Code, of which more than 50 percent of their voting stock is owned or controlled directly or indirectly by the same interests.

(4) A corporation that is not described in paragraphs (1) to (3), inclusive, or paragraph (5), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of that corporation derived

from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the corporation with respect to its activities conducted within the United States.

(5) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(6) Any affiliated corporation which is a ''controlled foreign corporation,'' as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code (''Subpart F income''). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the ''Subpart F income'' of that corporation for that taxable year and the denominator of which is the ''earnings and profits'' of that corporation for that taxable year, as defined in Section 964 of the Internal Revenue Code.

(7) (A) The income and factors of the above-enumerated corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a corporation that is not described in paragraphs (1) to (3), inclusive, and paragraph (5) and that is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (4).

(b) For purposes of this article and Section 24411:

(1) An ''affiliated corporation'' means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) A ''qualified taxpayer'' means a corporation which does both of the following:

(A) Files with the state tax return on which the water's-edge election is made a consent to the taking of depositions at the time and place most reasonably convenient to all parties from key domestic corporate individuals and to the acceptance of subpoenas duces tecum requiring reasonable production of documents to the Franchise Tax Board as provided in Section 19504 or by the State Board of Equalization as provided in Title 18, California Code of Regulations, Section 5005, or by the courts of this state as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of, and Section 2025 of, the Code of Civil Procedure. The consent relates to issues of jurisdiction and service and does not waive any defenses a taxpayer may otherwise have. The consent shall remain in effect so long as the water's-edge election is in effect and shall be limited to providing that information necessary to

review or to adjust income or deductions in a manner authorized under Sections 482, 861, Subpart F of Part III of Subchapter N, or similar provisions of the Internal Revenue Code, together with the regulations adopted pursuant to those provisions, and for the conduct of an investigation with respect to any unitary business in which the taxpayer may be involved.

(B) Agrees that for purposes of this article, dividends received by any corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) from either of the following are functionally related dividends and shall be presumed to be business income:

(i) A corporation of which more than 50 percent of the voting stock is owned, directly or indirectly, by members of the unitary group and which is engaged in the same general line of business.

(ii) Any corporation that is either a significant source of supply for the unitary business or a significant purchaser of the output of the unitary business, or that sells a significant part of its output or obtains a significant part of its raw materials or input from the unitary business. ''Significant,'' as used in this subparagraph, means an amount of 15 percent or more of either input or output.

All other dividends shall be classified as business or nonbusiness income without regard to this subparagraph.

(3) The definitions and locations of property, payroll, and sales shall be determined under the laws and regulations that set forth the apportionment formulas used by the individual states to assign net income subject to taxes on or measured by net income in that state. If a state does not impose a tax on or measured by net income or does not have laws or regulations with respect to the assignment of property, payroll, and sales, the laws and regulations provided in Article 2 (commencing with Section 25120) shall apply.

Sales shall be considered to be made to a state only if the corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.

(4) ''The United States'' means the 50 states of the United States and the District of Columbia.

(c) All references in this part to income determined pursuant to Section 25101 shall also mean income determined pursuant to this section.

SEC. 218. Section 25111 of the Revenue and Taxation Code is amended to read:

25111. (a) The making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water's-edge group and which is subject to tax under this part makes the election. A single taxpayer that is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivision (b). Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated corporation that is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer that is subsequently proved to be a member of the water's-edge group pursuant to a Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for a taxable year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) With the permission of the Franchise Tax Board.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions that are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

SEC. 219. Section 25111.1 of the Revenue and Taxation Code is amended to read:

25111.1. (a) For any taxable year beginning on or after January 1, 1994, consideration for water's-edge contracts in existence as of that date is no longer provided for by law. Contracts entered into for taxable years beginning prior to January 1, 1994, are rescinded for any periods remaining on those contracts commencing on the first day of the taxpayer's first taxable year that begins on or after January 1, 1994. Any fiscal year taxpayer whose contract is in effect as of December 31, 1993, shall continue to be bound by that contract until the close of its taxable year after January 1, 1994, and before December 31, 1994.

(b) Notwithstanding subdivision (a), and except for the purposes of Section 25115, all taxpayers that are members of a water's-edge group consisting of taxpayers with different taxable years shall continue to be bound by the contract in effect as of December 31, 1993, until the taxable year beginning prior to January 1, 1994, and ending in 1994 for each of the taxpayer members of the water's-edge group has ended.

SEC. 220. Section 25112 of the Revenue and Taxation Code is amended to read:

25112. (a) If a taxpayer electing to file under Section 25110 fails to supply any information described in subdivision (b), the taxpayer shall pay a penalty of one thousand dollars ($1,000) for each taxable year with respect to which the failure occurs.

(b) A taxpayer electing to file pursuant to Section 25110 shall do all of the following:

(1) Retain and make available to the Franchise Tax Board, upon request, the documents and information, including any questionnaires completed and submitted to the Internal Revenue Service or qualified states, that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Sections 482, 861, 863, 902, and 904, and Subpart F of Part III of Subchapter N, or similar sections of the Internal Revenue Code.

(2) Identify, upon request, principal officers or employees who have substantial knowledge of, and access to, documents and records that discuss pricing policies, profit centers, cost centers, and the methods of allocating income and expense among these centers. The information shall include the employees' titles and addresses.

(3) Retain and make available, upon request, all documents and correspondence ordinarily available to a corporation included in the water's-edge election that are submitted to, or obtained from, the

Internal Revenue Service, foreign countries or their territories or possessions, and competent authority pertaining to ruling requests, rulings, settlement resolutions, and competing claims involving jurisdictional assignment and sourcing of income that affect the assignment of income to the United States. The documents shall include all ruling requests and rulings on reorganizations involving foreign incorporation of branches, all ruling requests and rulings on changing a corporation's jurisdictional incorporation, and all documents that are ordinarily available to a corporation included in the water's-edge election that pertain to the determination of foreign tax liability, including examination reports issued by foreign taxing administrations. If the documents have been translated, the translations shall be furnished.

(4) Retain and make available, upon request, information filed with the Internal Revenue Service to comply with Sections 6038, 6038A, 6038B, 6038C, and 6041 of the Internal Revenue Code.

(5) Upon request, prepare and make available for each corporation organized or created under the laws of the United States or a political subdivision thereof, of which 50 percent or more of its voting stock is directly or indirectly owned or controlled, the information that would be included in the forms described in paragraph (4) if those forms were required for United States corporations.

(6) Retain and make available, upon request, all state tax returns filed by each corporation included under subdivision (a) in each state, including the District of Columbia.

(7) Comply with reasonable requests for information necessary to determine or verify its net income, apportionment factors, or the geographic source of that income pursuant to the Internal Revenue Code.

(8) For purposes of this subdivision, information for any year shall be retained for that period of time in which the taxpayer's income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed or during which an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(c) If the failure continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under subdivision (a)) of one thousand dollars ($1,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The increase in any penalty under this subdivision shall not exceed twenty-four thousand dollars ($24,000).

(d) If the taxpayer fails to comply substantially with any formal document request arising out of the examination of the tax treatment of any item (hereafter in this section referred to as the ''examined item'') before the 90th day after the date of the mailing of the request, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue may, upon motion by the Franchise Tax Board, prohibit the introduction by the taxpayer of documentation covered by that request.

(e) For purposes of this section, the time in which information is to be furnished (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as beginning not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(f) This section shall not apply with respect to any requested documentation if the taxpayer establishes that the failure to provide the documentation, as requested by the Franchise Tax Board, is due to reasonable cause. For purposes of subdivision (d), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause unless, after in-camera review of the documentation, the court finds otherwise.

(g) For purposes of this section, the term ''formal document request'' means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of documentation that is mailed by registered or certified mail to the taxpayer at its last known address and that sets forth all of the following:

(1) The time and place for the production of the documentation.

(2) A statement of the reason the documentation previously produced (if any) is not sufficient.

(3) A description of the documentation being sought.

(4) The consequences to the taxpayer of the failure to produce the documentation described in this section.

(h) Notwithstanding any other law or rule of law, any taxpayer to whom a formal document request is mailed may begin a proceeding to quash that request not later than the 90th day after the date the request was mailed. In that proceeding, the Franchise Tax Board may seek to compel compliance with the request.

(i) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subdivision (h). An order denying the petition shall be deemed a final order that may be appealed.

The running of the 90-day period referred to in subdivision (c) shall be suspended during any period during which a proceeding brought under subdivision (h) is pending.

(j) For purposes of this section, ''documentation'' means any documentation which may be relevant or material to the tax treatment of the examined item.

(k) The Franchise Tax Board, and any court having jurisdiction over a proceeding under subdivision (g), may extend the 90-day period referred to in subdivision (b).

(*l*) If any corporation takes any action as provided in subdivision (h), the running of any period of limitations under Sections 19057 to 19067, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings under subdivision (h) and appeals thereto are pending.

SEC. 221. Section 25124 of the Revenue and Taxation Code is amended to read:

25124. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rent and royalties from tangible personal property are allocable to this state:

(1) If and to the extent that the property is utilized in this state, or

(2) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

SEC. 222. Section 25129 of the Revenue and Taxation Code is amended to read:

25129. 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 this state 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 during the taxable year.

SEC. 223. Section 25131 of the Revenue and Taxation Code is amended to read:

25131. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year but the Franchise Tax Board may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

SEC. 224. Section 25132 of the Revenue and Taxation Code is amended to read:

25132. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year.

SEC. 225. Section 25134 of the Revenue and Taxation Code is amended to read:

25134. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year.

SEC. 226. Section 25141 of the Revenue and Taxation Code is amended to read:

25141. (a) For purposes of this section, the following definitions shall apply:

(1) ''Entity'' means an individual, corporation, association, partnership, limited liability company, estate, trust, or any combination thereof.

(2) ''Person'' means an individual or corporation.

(3) ''Professional athletic team'' means any entity which has all of the following characteristics:

(A) Employs concurrently during the taxable year five or more persons, who are compensated for being participating members of an athletic team engaging in public contests.

(B) Is a member of a league composed of at least five entities which are engaged in the operation of an athletic team and which are located in this and other states or in other countries.

(C) Has total minimum paid attendance in the aggregate for all contests wherever played during the taxable year of 40,000 persons.

(D) Has minimum gross income in the taxable year of one hundred thousand dollars ($100,000).

(b) For purposes of this chapter, a team shall be considered to have its operations based in the state or country in which the team derives its territorial rights under the rules of the league of which it is a member.

(c) The business income of a professional athletic team derived directly or indirectly from its operations as a professional athletic team

shall be allocated to this state pursuant to the following three-factor formula:

(1) Computation of the property factor under Section 25129:

(A) For a team that has its operations based in this state, the average value of all real and tangible personal property, wherever located, and owned or rented and used during the taxable year, shall be deemed to have been owned or rented and used in this state during the taxable year.

(B) For a team that has its operations based outside of this state, the average value of all real and tangible personal property, wherever located, and owned or rented and used during the taxable year, shall be deemed to have been owned or rented and used outside this state during the taxable year.

(2) Computation of the payroll factor under Section 25132:

(A) For a team that has its operations based in this state, the total compensation paid everywhere during the taxable year shall be deemed to have been paid in this state during the taxable year.

(B) For a team that has its operations based outside of this state, the total compensation paid everywhere during the taxable year shall be deemed to have been paid outside this state during the taxable year.

(3) Computation of the sales factor under Section 25134:

(A) For a team that has its operations based in this state, the total sales everywhere during the taxable year shall be deemed to have been made in this state during the taxable year.

(B) For a team that has its operations based outside of this state, the total sales everywhere during the taxable year shall be deemed to have been made outside this state during the taxable year.

(d) If any team that has its operations based in this state is required to allocate or apportion a part of its business income derived directly or indirectly from its operations as a professional athletic team to another state or country by the laws, regulations, or requirements of the other state or country and pays an income or franchise tax measured by income thereon as a result of the allocation or apportionment, then all of the following shall apply:

(1) The business income of the team otherwise subject to this section shall be reduced for purposes of this section by the amount of the business income which is allocated or apportioned to and taxed by the other state or country.

(2) This section shall not apply to any team in the same league that has its operations based in the other state or country, and the business income of any such team derived directly or indirectly from its operations as a professional athletic team shall be allocated or apportioned to this state in a manner consistent with the method of allocation or apportionment imposed by the other state or country on the business income of the team that has its operations based in this state.

(e) For purposes of the minimum tax imposed under Sections 23151 and 23151.1, an entity which operates a professional athletic team shall be treated as a corporation. The liability under Sections 23151 and 23151.1 of any corporation owning any portion or share of an entity shall be satisfied by payment of the minimum tax by that entity, if the corporation is not otherwise doing business in this state.

SEC. 227. (a) In enacting the amendments made by this act, the Legislature declares that the sole purpose of these amendments is to simplify the Bank and Corporation Tax Law by changing its terminology so that ''income year'' and ''taxable year'' have the same meaning for calendar and fiscal years beginning on or after January 1, 2000.

(b) The Legislature acknowledges that, because of the change in terminology resulting from these amendments, for the first taxable year beginning on or after January 1, 2000, the term ''taxable year'' will have two meanings. First, it will refer to the year for which the tax measured by the income of the preceding income year beginning in 1999 is payable (returns for the income year 1999 that are due on or after March 15, 2000). Second, it also will refer to the next tax measurement period (returns for the first taxable year, as redefined, beginning on or after January 1, 2000, due on or after March 15, 2001). Further, the Legislature acknowledges that this change in terminology may give rise to the appearance that the amount of tax required to be paid for the first taxable year beginning on or after January 1, 2000, has been increased or the time for making the payment of tax for that taxable year has been accelerated. However, the Legislature finds and declares that the amendments made by this act merely are a change in terminology and that the actual amount of tax required to be paid and the time for making the payment of tax will not change as a result of this act.

SEC. 228. (a) Except as provided in subdivision (b), any section of any act enacted by the Legislature during the 2000 calendar year that does both of the following shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act:

(1) Takes effect on or before January 1, 2001.

(2) Amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act.

(b) This section shall not apply to Sections 23042, 23151, 23515.1, 23153, 23181, 23183, 23183.1, 23281, 23282, and 24631 of the Revenue and Taxation Code, as amended by this act.

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CHAPTER 863

An act to amend Sections 18505, 18508, 18528, 18532, 18631, 18633, 18633.5, 18639, 19101, 19104, 19105, 19183, and 23802 of, to amend and renumber Sections 18503, 18547, 18552, and 19524 of, to add Sections 18505.3, 18531.5, 18635.5, 19120, and 19368 to, and to repeal Sections 18504, 18507, 18636, 18637, 18638, 18641, 18643, 18645, 18647, 19102, 19103, 19106, 19111, 19115, and 23810 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 18503 of the Revenue and Taxation Code is amended and renumbered to read:

18505.6. If an individual is unable to make a return required under Section 18501, the return of that individual shall be made by a duly authorized agent, his or her committee, guardian, fiduciary, or other person charged with the care of the person or property of the individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

SEC. 2. Section 18504 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 18505 of the Revenue and Taxation Code is amended to read:

18505. Every fiduciary (except a receiver appointed by authority of law in possession of only a part of the property of an individual) taxable under Part 10 (commencing with Section 17001) shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, for any of the following taxpayers for whom he or she acts, stating specifically the items of gross income of the taxpayer and the deductions and credits allowed for the taxable year:

(a) Every individual having an adjusted gross income from all sources in excess of eight thousand dollars ($8,000), if single.

(b) Every individual having an adjusted gross income from all sources in excess of sixteen thousand dollars ($16,000), if married.

(c) Every individual having a gross income from all sources in excess of ten thousand dollars ($10,000), if single, and twenty thousand dollars ($20,000), if married, regardless of the amount of adjusted gross income.

(d) Every estate having a net income from all sources in excess of one thousand dollars ($1,000).

(e) Every trust (not treated as a corporation under Section 23038) having a net income from all sources in excess of one hundred dollars ($100).

(f) Every estate or trust (not treated as a corporation under Section 23038) having a gross income from all sources in excess of ten thousand dollars ($10,000), regardless of the amount of the net income.

(g) Every decedent, for the year in which death occurred, and for prior years, if returns for those years should have been filed but have not been filed by the decedent, under the rules and regulations that the Franchise Tax Board may prescribe.

SEC. 4. Section 18505.3 is added to the Revenue and Taxation Code, to read:

18505.3. If an individual is deceased, the return of that individual required under Section 18501 shall be made by his or her executor, administrator, or other person charged with property of that decedent.

SEC. 5. Section 18507 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 18508 of the Revenue and Taxation Code is amended to read:

18508. (a) Returns of an estate, a trust, or an estate of an individual under Chapter 7 or Chapter 11 of Title 11 of the United States Code shall be made by the fiduciary thereof.

(b) Under the rules and regulations that the Franchise Tax Board may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of Section 18501. A return made pursuant to this subdivision shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him or her to make the return, and that the return is, to the best of his or her knowledge and belief, true and correct.

SEC. 7. Section 18528 of the Revenue and Taxation Code is amended to read:

18528. (a) For the purposes of Sections 19057 to 19067, inclusive (relating to period of limitations upon assessment and collection), and for the purposes of Section 19131 (relating to delinquent returns), a joint return made under Section 18522 shall be deemed to have been filed as follows:

(1) Where both spouses filed separate returns prior to making the joint return, on the date the last separate return was filed (but not earlier than the last date prescribed by this part for filing the return of either spouse).

(2) Where one spouse filed a separate return prior to the making of the joint return, and the other spouse had eight thousand dollars ($8,000) or less of adjusted gross income from all sources and ten thousand dollars ($10,000) or less of gross income from all sources for the taxable year,

on the date of the filing of the separate return (but not earlier than the last date prescribed by this part for the filing of the separate return).

(3) Where only one spouse filed a separate return prior to the making of a joint return and the other spouse had an adjusted gross income from all sources in excess of eight thousand dollars ($8,000) or a gross income from all sources in excess of ten thousand dollars ($10,000) for the taxable year, on the date of the filing of the joint return.

(b) For purposes of Article 1 (commencing with Section 19301) of Chapter 6, a joint return made under Section 18522 shall be deemed to have been filed on the later of the last date prescribed by this part for filing the return for the taxable year (determined without regard to any extension of time granted to either spouse) or the date the later timely filed separate return was filed.

SEC. 8. Section 18531.5 is added to the Revenue and Taxation Code, to read:

18531.5. For purposes of Section 443 of the Internal Revenue Code, where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

SEC. 9. Section 18532 of the Revenue and Taxation Code is amended to read:

18532. For the purposes of this article, each of the following shall apply:

(a) The status as husband and wife of two individuals having taxable years beginning on the same day shall be determined as follows:

(1) If both have the same taxable year, then as of the close of that year.

(2) If one dies before the close of the taxable year of the other, then as of the time of the death.

(b) An individual who is legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(c) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

SEC. 10. Section 18547 of the Revenue and Taxation Code is amended and renumbered to read:

18628. (a) Any person required to register a tax shelter with the Secretary of the Treasury under Section 6111 of the Internal Revenue Code shall, if that tax shelter is organized in California, be required to send a duplicate of that registration information to the Franchise Tax Board not later than the day on which the first offering for sale of interests in that tax shelter occurs.

(b) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary

of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(c) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, shall be applicable.

SEC. 11. Section 18552 of the Revenue and Taxation Code is amended and renumbered to read:

18408. The Franchise Tax Board is authorized to require that information with respect to persons subject to the taxes imposed by Article 5 (commencing with Section 18661) of Chapter 2 (relating to tax withheld at source) as is necessary or helpful in securing proper identification of those persons.

SEC. 12. Section 18631 of the Revenue and Taxation Code is amended to read:

18631. (a) This article does not apply to any payment of interest obligations not taxable under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(b) Except as otherwise provided, every person required to file an information return with the Secretary of the Treasury under any of the federal sections listed in subdivision (c) may be required to file a copy of the federal information return with the Franchise Tax Board at the time and in the manner as it may, by forms and instructions, require.

(c) Subdivision (b) shall apply to each of the following:

(1) Section 6034A of the Internal Revenue Code, relating to information to beneficiaries of estates and trusts.

(2) Section 6039 of the Internal Revenue Code, relating to information required in connection with certain options.

(3) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property as defined in Section 18662.

(4) Section 6041 of the Internal Revenue Code, relating to information at source.

(5) Section 6041A of the Internal Revenue Code, relating to returns regarding payments of remuneration for services and direct sales, except that no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

(6) Section 6042 of the Internal Revenue Code, relating to returns regarding payments of dividends and corporate earnings and profits.

(7) Section 6045 of the Internal Revenue Code, relating to returns of brokers.

(8) Section 6049 of the Internal Revenue Code, relating to returns regarding payments of interest.

(9) Section 6050H of the Internal Revenue Code, relating to returns of mortgage interest received in trade or business from individuals.

(10) (A) Section 6050I of the Internal Revenue Code, relating to cash received in trade or business, etc., except that Section 6050I(g) of the Internal Revenue Code, relating to cash received by criminal court, shall not apply.

(B) (i) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under this paragraph. The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(ii) Any information or return obtained by the Attorney General or a district attorney pursuant to this subparagraph shall be confidential and used only for investigative or prosecutorial purposes.

(11) Section 6050J of the Internal Revenue Code, relating to returns of foreclosures and abandonments of security.

(12) (A) Section 6050K of the Internal Revenue Code, relating to returns of exchanges of certain partnership interests.

(B) In addition to the general requirement under subparagraph (A), a transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(13) Section 6050L of the Internal Revenue Code, relating to returns of certain dispositions of donated property.

(14) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(15) Section 6050P of the Internal Revenue Code, relating to returns of cancellation of indebtedness by certain entities.

(16) Section 6050Q of the Internal Revenue Code, relating to certain long-term care benefits.

(17) Section 6050R of the Internal Revenue Code, relating to returns of certain purchases of fish.

(18) Section 6050S of the Internal Revenue Code, relating to higher education tuition and related expenses.

(19) Section 6052 of the Internal Revenue Code, relating to returns regarding payment of wages in the form of group-term life insurance.

(d) Every person required to make a return under subdivision (b) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

SEC. 13. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of the information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

SEC. 14. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or income year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board,

the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a

payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner or on or before the fifteenth day of the third month after the close of the income year of the owner, whichever is applicable.

(4) For limited liability companies disregarded pursuant to Section 23038, ''taxable or income year of the owner'' shall be substituted for ''taxable year'' in Sections 17941 and 17942.

SEC. 15. Section 18635.5 is added to the Revenue and Taxation Code, to read:

18635.5. (a) Section 6034A of the Internal Revenue Code, relating to information to beneficiaries of estates and trusts, shall apply, except as otherwise provided.

(b) Section 6034A(a) is modified to refer to Section 18505 in lieu of Section 6012(a) of the Internal Revenue Code.

(c) Section 6034A(c)(3) is modified to refer to Section 19051 in lieu of Section 6213(b)(1) of the Internal Revenue Code.

(d) Section 6034A(c)(5) is modified to refer to Article 7 of Chapter 4 of this part in lieu of Part II of Subchapter A of Chapter 68 of the Internal Revenue Code.

SEC. 16. Section 18636 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 18637 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 18638 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 18639 of the Revenue and Taxation Code is amended to read:

18639. (a) (1) In addition to those reports required under paragraph (8) of subdivision (c) of Section 18631, information returns shall be required, at the time and in the form and manner and to the extent that the Franchise Tax Board may prescribe, from both of the following:

(A) Every person who makes payments of exempt-interest dividends, as described in Section 852(b)(5) of the Internal Revenue Code, that are not exempt-interest dividends, as described in Section 17145 of the Revenue and Taxation Code, aggregating ten dollars ($10) or more to any person, other than to any person described in paragraph (2), during any calendar year.

(B) Every person who receives payments of interest as a nominee and who makes payments aggregating ten dollars ($10) or more during any calendar year to any other person, other than to any person described in paragraph (2), with respect to the interest so received. For purposes of this paragraph, ''interest'' is limited to interest on any obligation if the interest is exempt from tax under Section 103(a) of the Internal Revenue Code or if the interest is exempt from tax, without regard to the identity of the holder, under any other provision of Title 26 of the United States Code, but which is not exempt from income tax under Part 10 (commencing with Section 17001).

(2) For purposes of this subdivision, a person shall not be required to make a report pursuant to paragraph (1) if the person receiving the payment is any of the following:

(A) A corporation.

(B) An organization exempt from taxation under Section 23701 or an individual retirement plan.

(C) The United States or any wholly owned agency or instrumentality thereof.

(D) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(E) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(F) An international organization or any wholly owned agency or instrumentality thereof.

(G) A foreign central bank of issue.

(H) A dealer in securities or commodities required to register under the laws of the United States or a state, the District of Columbia, or possession of the United States.

(I) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(J) An investment company, as defined in Section 80a-3 of the United States Code, registered at all times during the taxable year under the Investment Company Act of 1940.

(K) A common trust fund, as defined in Section 17671.

(L) Any trust that is exempt from tax under Section 664(c) of Title 15 of the Internal Revenue Code.

(b) Every person required to make a return under this section shall also furnish a statement to each person whose name is set forth in the return, as required to do so by the Internal Revenue Code.

SEC. 20. Section 18641 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 18643 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 18645 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 18647 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 19101 of the Revenue and Taxation Code is amended to read:

19101. (a) If any amount of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), is not paid on or before the last date prescribed for payment, interest on that amount at the adjusted annual rate established under Section 19521 shall be paid for the period from that last date to the date paid.

(b) For purposes of this article, the last date prescribed for payment of the tax shall be determined under Chapter 4 (commencing with Section 19001), with the application of the following rules:

(1) The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under Section 19008.

(2) The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy as provided in Article 5 (commencing with Section 19081), prior to the last date otherwise prescribed for that payment.

(3) In all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Franchise Tax Board).

(c) Except as provided in this article:

(1) Interest prescribed under this article on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (except Article 3 (commencing with Section 19031), relating to deficiency assessments) to any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) shall be deemed also to refer to interest imposed by this article on that tax.

(2) (A) Interest shall be imposed under subdivision (a) in respect to any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under Section 19131, 19132, or 19164) only if that assessable penalty, additional amount, or addition to the tax is not paid within 15 calendar days from the date of notice and demand therefor, and in that case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest shall be imposed under this article with respect to any 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:

(i) Begins on the date on which the return of the tax with respect to which that addition to tax is imposed is required to be filed (including any extensions), and

(ii) Ends on the date of payment of that addition to tax.

(3) If notice and demand is made for payment of any amount and if that amount is paid within 15 calendar days after the date of the notice and demand, interest under this article on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(d) This article shall not apply to any failure to pay estimated tax required by Section 19025 or 19136.

SEC. 25. Section 19102 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 19103 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 19104, as amended by Chapter 183 of the Statutes of 2000, of the Revenue and Taxation Code is amended to read:

19104. (a) The Franchise Tax Board may abate all or any part of any of the following:

(1) Any interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(2) Any interest on a payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to an officer or employee of the Franchise Tax Board (acting in his or her official capacity) being dilatory in performing a ministerial or managerial act.

(3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) For purposes of subdivision (a):

(1) Except as provided in paragraph (3), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(2) (A) Except as provided in paragraph (4), after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization within the following periods:

(i) Thirty days in the case of any unpaid interest described under subdivision (a).

(ii) Ninety days in the case of any paid interest described under subdivision (a).

(B) The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(C) Except for clauses (i) and (ii) of subparagraph (A), the provisions of this paragraph are operative for requests for abatement of interest made on or after January 1, 1998. The provisions of clauses (i) and (ii) of subparagraph (A) shall apply to requests for abatement of interest made on or after January 1, 2001, in accordance with subdivision (d).

(3) If the Franchise Tax Board fails to mail its notice of determination on a request to abate interest within six months after the request is filed, the taxpayer may consider that the Franchise Tax Board has determined not to abate interest and appeal that determination to the board. This paragraph shall not apply to requests for abatement of interest made pursuant to paragraph (4).

(4) A request for abatement of interest related to a proposed deficiency may be made with the written protest of the underlying

proposed deficiency filed pursuant to Section 19041 or with an appeal to the board under Section 19045 in the form and manner required by the Franchise Tax Board. The action of the Franchise Tax Board denying any portion of the request for abatement of interest relating to the proposed deficiency shall be considered as part of the appeal of the action of the Franchise Tax Board on the protest of the proposed deficiency. If the taxpayer filed an appeal from the Franchise Tax Board's action on the protest of a proposed deficiency and the deficiency is final pursuant to Section 19048, the taxpayer may not thereafter request an abatement of interest accruing prior to the time the deficiency is final. However, the taxpayer may thereafter request an abatement pursuant to this section limited to interest accruing after the deficiency is final.

(c) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(1) The taxpayer (or a related party) has in any way caused that erroneous refund.

(2) That erroneous refund exceeds fifty thousand dollars ($50,000).

(d) The amendments made to this section by the act adding this subdivision shall apply to requests for abatement of interest and appeals made on or after January 1, 2001.

(e) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), the amendments made by Chapter 600 of the Statutes of 1997 are operative with respect to taxable or income years beginning on or after January 1, 1998.

SEC. 28. Section 19105 of the Revenue and Taxation Code is amended to read:

19105. In the case of an individual or fiduciary, the Franchise Tax Board shall not assess interest charges pursuant to Section 19101 for the period between 45 days after the date of final review of an audit determining an additional amount is owed and the date a notice of proposed deficiency assessment is sent to the taxpayer.

SEC. 29. Section 19106 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 19111 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 19115 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 19120 is added to the Revenue and Taxation Code, to read:

19120. Any portion of any amount which has been erroneously refunded and which is recoverable by suit pursuant to Section 19411 shall bear interest at the adjusted annual rate established pursuant to

Section 19521 from the date that is 30 days after the Franchise Tax Board mails a notice and demand for repayment.

SEC. 33. Section 19183 of the Revenue and Taxation Code is amended to read:

19183. (a) (1) A penalty shall be imposed for failure to file correct information returns, as required by this part, and that penalty shall be determined in accordance with Section 6721 of the Internal Revenue Code.

(2) Section 6721(e) of the Internal Revenue Code is modified to the extent that the reference to Section 6041A(b) of the Internal Revenue Code shall not apply.

(b) (1) A penalty shall be imposed for failure to furnish correct payee statements as required by this part, and that penalty shall be determined in accordance with Section 6722 of the Internal Revenue Code.

(2) Section 6722(c) of the Internal Revenue Code is modified to the extent that the references to Sections 6041A(b) and 6041A(e) of the Internal Revenue Code shall not apply.

(c) A penalty shall be imposed for failure to comply with other information reporting requirements under this part, and that penalty shall be determined in accordance with Section 6723 of the Internal Revenue Code.

(d) (1) The provisions of Section 6724 of the Internal Revenue Code relating to waiver, definitions, and special rules, shall apply, except as otherwise provided.

(2) Section 6724(d)(1) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (a) of Section 18640, in lieu of Section 6044(a)(1) of the Internal Revenue Code.

(ii) Subdivision (a) of Section 18644, in lieu of Section 6050A(a) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4), 4093(e), 4101(d), 6041(b), 6041A(b), 6045(d), 6051(d), and 6053(c)(1) of the Internal Revenue Code shall not apply.

(C) The term ''information return'' shall also include the return required by paragraph (1) of subdivision (h) of Section 18662.

(3) Section 6724(d)(2) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (b) of Section 18640, in lieu of Section 6044(e) of the Internal Revenue Code.

(ii) Subdivision (b) of Section 18644, in lieu of Section 6050A(b) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4)(B), 6031(b), 6037(b), 6041A(e), 6045(d), 6051(d), 6053(b), and 6053(c) of the Internal Revenue Code shall not apply.

(C) The term ''payee statement'' shall also include the statement required by paragraph (2) of subdivision (h) of Section 18662.

(e) In the case of each failure to provide a written explanation as required by Section 402(f) of the Internal Revenue Code, at the time prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Franchise Tax Board and in the same manner as tax, by the person failing to provide that written explanation, an amount equal to ten dollars ($10) for each failure, but the total amount imposed on that person for all those failures during any calendar year shall not exceed five thousand dollars ($5,000).

(f) Any penalty imposed by this part shall be paid on notice and demand by the Franchise Tax Board and in the same manner as tax.

SEC. 34. Section 19368 is added to the Revenue and Taxation Code, to read:

19368. If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this section.

SEC. 35. Section 19524 of the Revenue and Taxation Code is amended and renumbered to read:

18409. (a) The Franchise Tax Board shall prescribe regulations providing standards for determining which returns shall be filed on magnetic media or in other machine-readable form. The Franchise Tax Board shall not require returns of any tax imposed by Part 10 (commencing with Section 17001) on individuals, estates, and trusts to be other than on paper forms supplied by the Franchise Tax Board. In prescribing those regulations, the Franchise Tax Board shall take into account, among other relevant factors, the ability of the taxpayer to comply at a reasonable cost with that filing requirement.

(b) (1) Subdivision (a) is applicable only to taxpayers required to file returns on magnetic media or in other machine-readable form pursuant to Section 6011(e) of the Internal Revenue Code and the regulations adopted thereto.

(2) For purposes of paragraph (1), the last sentence of Section 6011(e)(2) of the Internal Revenue Code, shall not apply.

(3) In addition, the regulations under subdivision (a) shall not require that returns filed on magnetic media or in other machine-readable form contain more information than is required to be included in similar returns filed with the Internal Revenue Service under Section 6011(e) of the United States Internal Revenue Code and the regulations adopted thereto.

(c) In lieu of the magnetic media or other machine-readable form returns required by this section, a copy of the similar magnetic media or other machine-readable form returns filed with the Internal Revenue Service pursuant to Section 6011(e) of the Internal Revenue Code, and the regulations adopted thereto, may be filed with the Franchise Tax Board.

SEC. 36. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an ''S corporation,'' shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(2) In the case of an ''S corporation'' which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An ''S corporation'' shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an ''S corporation'' shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an ''S corporation'' for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between ''C years'' and ''S years,'' shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to passthrough items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an ''S corporation,'' to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an ''S corporation'' shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b):

(1) An ''S corporation'' shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held ''C corporations'' and personal service corporations.

(B) For purposes of this paragraph, the ''adjusted gross income'' of the ''S corporation'' shall be equal to its ''net income,'' as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an ''S corporation.''

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19101 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 37. Section 23810 of the Revenue and Taxation Code is repealed.

CHAPTER 864

An act to amend Sections 17053.46, 17053.47, 23622.8, and 23646 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 17053.46 of the Revenue and Taxation Code is amended to read:

17053.46. (a) For each taxable year beginning on or after January 1, 1995, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the first day the individual 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 qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged

individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) ''LAMBRA'' means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) 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.

(II) 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 such a closure or layoff.

(III) 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.

(IV) 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.

(V) 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.

(VI) 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.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) 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) An individual who is 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) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) ''Qualified taxpayer'' means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business

operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors ''2,000'' and ''12'' shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) ''Qualified displaced employee'' means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) ''LAMBRA expiration date'' means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) For qualified disadvantaged individuals or qualified displaced employees hired on or after January 1, 2001, the taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office, or social services agency, as appropriate, a certification that provides that a qualified disadvantaged individual or qualified displaced employee meets the eligibility requirements specified in subparagraph (C) of paragraph (4) of subdivision (b) or subparagraph (A) of paragraph (6) 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, both of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified

wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined 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 individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified displaced 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 an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(g) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (h) or (i).

(h) In the case where the credit otherwise allowed under this section exceeds the ''net tax'' for the taxable year, that portion of the credit that exceeds the ''net tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(i) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the ''net tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) 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 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 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 (h).

(j) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 2. Section 17053.47 of the Revenue and Taxation Code is amended to read:

17053.47. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the ''net tax'' (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the first day the qualified disadvantaged individual commences employment with the qualified 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.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Manufacturing Enhancement Area'' means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) ''Manufacturing Enhancement Area expiration date'' means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(6) ''Qualified taxpayer'' means any taxpayer engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and who meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) For qualified disadvantaged individuals hired on or after January 1, 2001, the taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office, or social services agency, as appropriate, a certification that provides that a qualified disadvantaged individual meets the eligibility requirements specified in subparagraph (C) of paragraph (5) 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, all of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined 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 individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals 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 qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(g) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (h) or (i).

(h) In the case where the credit otherwise allowed under this section exceeds the ''net tax'' for the taxable year, that portion of the credit that exceeds the ''net tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(i) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the ''net tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. For that purpose, the taxpayer's business income that is 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 Manufacturing Enhancement Area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 (h).

(j) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 3. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the ''tax'' (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual during the income year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Manufacturing Enhancement Area'' means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) ''Manufacturing Enhancement Area expiration date'' means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the income year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(6) ''Qualified taxpayer'' means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets all of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) For qualified disadvantaged individuals hired on or after January 1, 2001, the taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office, or social services agency, as appropriate, a certification that provides that a qualified disadvantaged individual meets the eligibility requirements specified in subparagraph (C) of paragraph (5) 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, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified 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 disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined 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 individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals 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 qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the income year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(h) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the ''tax'' for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 the 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 (h).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 4. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) ''LAMBRA'' means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(4) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) 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.

(II) 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 such a closure or layoff.

(III) 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.

(IV) 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.

(V) 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.

(VI) 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.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) 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) An individual who is 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) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) ''Qualified taxpayer'' means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees as determined below in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a qualified taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors ''2,000'' and ''12'' shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) ''Qualified displaced employee'' means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) ''LAMBRA expiration date'' means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) For qualified disadvantaged individuals or qualified displaced employees hired on or after January 1, 2001, the taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office, or social services agency, as appropriate, a certification that provides that a qualified disadvantaged individual or qualified displaced employee meets the eligibility requirements specified in subparagraph (C) of paragraph (4) of subdivision (b) or subparagraph (A) of paragraph (6) 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, both of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, ''controlled group of corporations'' has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) ''More than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between an employee and an

employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment of any employee, other than seasonal employment, 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 disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified 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 disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined 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 individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) A mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(f) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar

to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(g) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (h) or (i).

(h) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the income year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(i) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the ''tax'' for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) 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 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 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 (h).

(j) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

CHAPTER 865

An act to add Section 7073.9 to the Government Code, and to amend Sections 17053.47 and 23622.8 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 7073.9 is added to the Government Code, to read:

7073.9. Upon approval by the agency of an application by a city or county, or city and county, a manufacturing enhancement area in Imperial County is expanded to the extent proposed, but in no event by more than a 200-acre site that is located in Imperial County and used for purposes of 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, to include definitive boundaries that are contiguous to the manufacturing enhancement area. The agency shall approve an application for expansion of the manufacturing enhancement area if the agency determines that the proposed additional territory meets the criteria specified in Section 7073.8 to the same extent as the existing territory of the manufacturing area and if all of the following conditions are met:

(a) The governing body of each city in which the manufacturing enhancement is located approves an ordinance or resolution approving the proposed expansion of that area.

(b) The additional territory proposed to be added to the manufacturing enhancement area is zoned for industrial or commercial use.

(c) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems is available to the additional territory proposed to be added to the manufacturing enhancement area.

SEC. 2. Section 17053.47 of the Revenue and Taxation Code is amended to read:

17053.47. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the ''net tax'' (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the first day the qualified disadvantaged individual commences employment with the qualified 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.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Manufacturing Enhancement Area'' means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) ''Manufacturing Enhancement Area expiration date'' means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(6) ''Qualified taxpayer'' means any taxpayer engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and who meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 0211 to 0291, inclusive, Code 0723, or in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's workforce hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual

commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined 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 individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals 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 qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the ''net tax'' for the taxable year, that portion of the credit that exceeds the ''net tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the ''net tax'' for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. For that purpose, the taxpayer's business income that is 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 Manufacturing Enhancement Area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 3. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the ''tax'' (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual during the income year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Manufacturing Enhancement Area'' means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) ''Manufacturing Enhancement Area expiration date'' means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) ''Qualified disadvantaged individual'' means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the income year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(6) ''Qualified taxpayer'' means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets all of the following requirements:

(A) Is engaged in those lines of business described in Codes 0211 to 0291, inclusive, Code 0723, or in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's workforce hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(7) ''Seasonal employment'' means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified 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 disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined 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 individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual 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 qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, 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 disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals 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 qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the income year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the ''tax'' for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 the 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 Manufacturing Enhancement Area 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 Manufacturing Enhancement Area 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 (g).

(h) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution as a result of the unique need for a Manufacturing Enhancement Area in Imperial County to be expanded to include additional territory.

CHAPTER 866

An act to amend Section 16605 of the Welfare and Institutions Code, relating to social services, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

I am signing Senate Bill 1946, which, among its provisions, would specify that a county shall not become ineligible for Kinship Support Service Program (KSSP) grant funds due to a reduction in the percentage of relative care placements. However, I am deleting section 2 and 3 of the bill, which would provide a $3 million General Fund appropriation to augment funding for those counties currently eligible to participate in the program in addition to funding an evaluation of the program. Funding for these purposes should be considered in the context of other priorities during the development of the annual state budget.

GRAY DAVIS, Governor

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

SECTION 1. Section 16605 of the Welfare and Institutions Code is amended to read:

16605. (a) The department shall, subject to the availability of funds appropriated therefor, conduct a Kinship Support Services Program that is a grants-in-aid program providing startup and expansion funds for local kinship support services programs that provide community-based family support services to relative caregivers and the children placed in their homes by the juvenile court or who are at risk of dependency or delinquency. Relatives with children in voluntary placements may access services, at the discretion of the county.

(b) The Kinship Support Services Program shall create a public-private partnership. A combination of federal, state, county, and private sector resources shall finance the establishment and ongoing operation of the program.

(c) The counties participating in the program shall meet the following requirements:

(1) Have 40 percent or more of dependent children in relative care placements.

(2) Have a demonstrated capacity for collaboration and interagency coordination.

(3) Have a viable plan for ongoing financial support of the local kinship support services program.

(4) Utilize relative caregivers as employees of the program.

(5) Have strong and viable public or private agencies to operate the program.

(d) The Kinship Support Services Program shall demonstrate the use of supportive services provided to relative caregivers and children placed in their homes using a community-based kinship support services model. This model shall provide services to relative caregivers that are aimed at helping to ensure permanent family kinship placements for children who have been placed with them by the juvenile court, and to provide family support services that will eliminate the need for juvenile court jurisdiction and the provision of services by the county welfare department.

(e) The program shall provide family support services appropriate for the target populations. These services may include, but are not limited to, the following:

(1) Assessment and case management.

(2) Social services referral and intervention aimed at maintaining the kinship family unit, for example, housing, homemaker services, respite care, legal services, and day care.

(3) Transportation for medical care and educational and recreational activities.

(4) Information and referral services.

(5) Individual and group counseling in the area of parent-child relationships and group conflict.

(6) Counseling and referral services aimed at promoting permanency, including kinship adoption and guardianship.

(7) Tutoring and mentoring.

(f) The Edgewood Center for Children and Families in San Francisco or any other appropriate agency or individual approved by the department in consultation with the Statewide Kinship Advisory Committee shall provide technical assistance to the Kinship Support Services Program and shall facilitate the sharing of information and resources among the local programs.

(g) For the 2001–02 fiscal year, the department shall give priority in the grants-in-aid program to counties that have participated in the Kinship Support Services Program prior to the 2001–02 fiscal year or to counties that have received technical assistance and training related to that program, but no funding for program services.

(h) A county shall not become ineligible for grant funds due to a reduction in the percentage of relative care placements.

SEC. 2. The State Department of Social Services shall contract for a study on the cost and benefits, and the effectiveness, of the Kinship Support Services Program, provided for pursuant to Section 16605 of the Welfare and Institutions Code. The department may utilize up to two hundred twenty-five thousand dollars ($225,000) of the appropriation made by subdivision (a) of Section 3 of this act for the purposes of the study required by this section.

SEC. 3. In addition to any other funds appropriated for purposes of Section 16605 of the Welfare and Institutions Code, the sum of three million dollars ($3,000,000) is appropriated as follows:

(a) The sum of two million seven hundred seventy-five thousand dollars ($2,775,000) is hereby appropriated from the General Fund to the State Department of Social Services for the purposes of funding the Kinship Support Services Program provided for pursuant to Section 16605 of the Welfare and Institutions Code.

(b) The sum of two hundred twenty-five thousand dollars ($225,000) is hereby appropriated from the General Fund to the State Department of Social Services for funding the technical assistance to be provided to the Kinship Support Services Program by the Edgewood Center for Children and Families or any other appropriate agency or individual approved by the department in consultation with the Statewide Kinship

Advisory Committee, for purposes of Section 16605 of the Welfare and Institutions Code.

CHAPTER 867

An act to amend Sections 650, 803.5, 2273, 6106.5, and 6153 of, to add Sections 1003, 1004, 2220.6, 2417, and 6106.6 to, and to add and repeal Article 10 (commencing with Section 9889.25) of Chapter 20.3 of Division 3 of, the Business and Professions Code, to amend Sections 750, 1872.1, and 1872.7 of, to add Section 758 to, to add Article 4.5 (commencing with Section 1874.85) and Article 4.6 (commencing with Section 1874.90) to Chapter 12 of Part 2 of Division 1 of, and to add and repeal Section 1874.91 of, the Insurance Code, to amend Sections 549 and 550 of the Penal Code, and to add Section 10904 to the Vehicle Code, relating to insurance fraud, and making an appropriation therefor.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. The Legislature finds and declares that auto theft, auto body repair fraud and other forms of auto insurance fraud, including staged accidents, cause great economic harm and personal suffering to the people of California. The cost of this theft and fraud has been estimated to be at least $1 billion annually and may be in excess of $9 billion annually. According to the Bureau of Automotive Repair, 39 percent of the work it inspects involves fraud, and according to the California Highway Patrol, insurance fraud and auto theft are linked to organized crime. Accordingly, the Legislature has determined that it is necessary to increase efforts by state agencies to combat this type of fraud and to require insurers to strengthen their antifraud efforts.

SEC. 2. This act shall be known and may be cited as the Anti-Auto Theft and Insurance Fraud Act of 2000.

SEC. 3. Section 650 of the Business and Professions Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or

coownership in or with any person to whom these patients, clients or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payor.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

''Health care facility'' means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by a fine not exceeding fifteen thousand dollars ($15,000), or by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison, or by both the fine and the imprisonment in a county jail or in the state prison. A second or subsequent conviction for a violation of this section is punishable by imprisonment in the state prison, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that fine and imprisonment.

SEC. 4. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts

alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

SEC. 5. Section 1003 is added to the Business and Professions Code, to read:

1003. (a) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct.

(b) A licensee of the State Board of Chiropractic Examiners shall have his or her license to practice revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to subdivision (c) of Section 10 of the Chiropractic Act.

SEC. 6. Section 1004 is added to the Business and Professions Code, to read:

1004. The State Board of Chiropractic Examiners shall investigate any licensee against whom an information or indictment has been filed that alleges a violation of Section 550 of the Penal Code or Section 1871.4 of the Insurance Code, if the district attorney does not otherwise object to initiating an investigation.

SEC. 7. Section 2220.6 is added to the Business and Professions Code, to read:

2220.6. The board shall investigate any licensee against whom an information or indictment has been filed that alleges a violation of Section 550 of the Penal Code or Section 1871.4 of the Insurance Code, if the district attorney does not otherwise object to initiating an investigation.

SEC. 8. Section 2273 of the Business and Professions Code is amended to read:

2273. (a) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct.

(b) A licensee shall have his or her license revoked for a period of 10 years upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.

SEC. 9. Section 2417 is added to the Business and Professions Code, to read:

2417. (a) Any type of business organization that holds itself out to the public as an organization practicing medicine, or that a reasonably informed person would believe is engaged in the practice of medicine, shall be owned and operated only by one or more licensed physicians and surgeons. This section does not apply to hospitals, or private, nonprofit medical clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code. The Director of the State Department of Health Services may exempt other business organizations from the requirements of this section, upon application to the director and upon submission of evidence that it is in the public interest to provide that exemption, as determined by the director.

(b) A physician and surgeon who knowingly practices medicine with a business organization not owned or operated in compliance with subdivision (a) shall have his or her license to practice permanently revoked.

SEC. 10. Section 6106.5 of the Business and Professions Code is amended to read:

6106.5. It shall constitute cause for disbarment or suspension for an attorney to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

SEC. 11. Section 6106.6 is added to the Business and Professions Code, to read:

6106.6. The State Bar shall investigate any licensee against whom an information or indictment has been filed that alleges a violation of Section 550 of the Penal Code or Section 1871.4 of the Insurance Code, if the district attorney does not otherwise object to initiating an investigation.

SEC. 12. Section 6153 of the Business and Professions Code is amended to read:

6153. Any person, firm, partnership, association, or corporation violating subdivision (a) of Section 6152 is punishable, upon a first conviction, by imprisonment in a county jail for not more than one year

or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine. Upon a second or subsequent conviction, a person, firm, partnership, association, or corporation is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, three, or four years, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine.

Any person employed either as an officer, director, trustee, clerk, servant or agent of this state or of any county or other municipal corporation or subdivision thereof, who is found guilty of violating any of the provisions of this article, shall forfeit the right to his office and employment in addition to any other penalty provided in this article.

SEC. 13. Article 10 (commencing with Section 9889.25) is added to Chapter 20.3 of Division 3 of the Business and Professions Code, to read:

Article 10. Auto Body Repair Inspection Pilot Program

9889.25. The bureau shall implement a pilot program known as the Auto Body Repair Inspection Pilot Program, pursuant to which the bureau shall inspect insured vehicles that have been subject to auto body repairs for the purpose of identifying work that has not been done according to specifications in the final invoice. The pilot program shall be conducted between July 1, 2001, and June 30, 2003.

9889.26. Under the pilot program, the bureau may accept requests from the registered owner of an insured vehicle for the bureau to inspect a vehicle that has been subject to auto body repairs. Requests may be submitted by mail, by a toll-free telephone number, and via the Internet. The bureau shall, to the extent possible, accept requests in a manner to enable all areas of California to participate in the pilot program.

9889.27. The bureau shall select a vehicle for participation in the pilot program based on the vehicle meeting each of the following criteria:

(a) The auto body repairs to the vehicle were completed within 120 days of the request to participate in the pilot program.

(b) The repair bill was in excess of two thousand five hundred dollars ($2,500).

(c) The owner of the vehicle is willing to provide access to the vehicle.

(d) Bureau personnel and resources to conduct an inspection are available.

9889.28. (a) An insurer, upon request by the bureau, shall provide to the bureau documents and other necessary information related to an inspection to be performed under this article, pursuant to Sections

1874.1 and 1874.2 of the Insurance Code. The information provided in this regard shall be subject to Section 1872.5 of the Insurance Code.

(b) If, as the result of an inspection, any civil, criminal, or administrative action is taken against an auto body repair shop, the order or judgment shall include a requirement for restitution to the insurer that paid the claim.

9889.29. The bureau shall report to the Legislature on the results of the pilot program on or before September 1, 2003.

9889.30. This article shall become inoperative on January 1, 2004, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 14. Section 750 of the Insurance Code is amended to read:

750. (a) Except as provided in Section 750.5, any person acting individually or through his or her employees or agents, who engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance, and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether in the form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customers, is guilty of a crime.

(b) (1) A violation of subdivision (a) is punishable upon a first conviction by a fine not exceeding fifteen thousand dollars ($15,000), or by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison, or by both the fine and the imprisonment in a county jail or in the state prison.

(2) A second or subsequent conviction of violating subdivision (a) is punishable by imprisonment in the state prison, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that fine and imprisonment.

(c) Nothing in this section shall prohibit a licensed collection or lien agency from receiving a commission on the collection of delinquent debts nor prohibits the agency from paying its employees a commission for obtaining clients seeking collection on delinquent debts.

(d) Nothing in this section is intended to limit, restrict, or in any way apply to the rebating of commissions by insurance agents or brokers, as authorized by Proposition 103, enacted by the people at the November 8, 1988, general election.

SEC. 15. Section 758 is added to the Insurance Code, to read:

758. (a) It is unlawful for an insurer to require an auto body repair shop registered pursuant to Sections 9884 and 9889.52 of the Business and Professions Code, as a condition of participation in the insurer's direct repair program, to pay for the cost of an insured's rental vehicle that is replacing an insured vehicle damaged in an accident, or to pay for the towing charges of the insured with respect to that accident. However,

the insurer and the auto body repair shop may agree in writing to terms and conditions under which the rental vehicle charges become the responsibility of the auto body repair shop when the shop fails to complete work within the agreed-upon time for repair of the damaged vehicle.

(b) A registered auto body repair shop that is denied participation in an insurer's direct repair program may report a denial to the department, which shall maintain a record of all those denials for the purposes of gathering market conduct information. An insurer, upon the request of the department, shall disclose the fact that a denial was made.

(c) Any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body rate in a specific geographic area shall report the results of that survey to the department, which shall make the information available upon request. The survey information shall include the names and addresses of the auto body repair shops and the total number of shops surveyed.

SEC. 16. Section 1872.1 of the Insurance Code is amended to read:

1872.1. (a) There is created within the Bureau of Fraudulent Claims an advisory committee on automobile insurance fraud and economic automobile theft prevention, investigation, and prosecution, as provided in this chapter. The committee shall be composed of the Chief of the Bureau of Fraudulent Claims, a representative from the Department of Justice, the Department of Motor Vehicles, the Division of Investigation of the Department of Consumer Affairs, the Department of the California Highway Patrol, the Bureau of Automotive Repair, the Parole and Community Services Division of the Department of Corrections, the State Bar of California, the Medical Board of California, the State Board of Chiropractic Examiners, two representatives from local law enforcement agencies, one of whom shall be a prosecutor, and representatives of three insurers assessed pursuant to Section 1872.8, and a representative of a labor organization with members in the automotive repair business.

(b) The commissioner shall select representatives from local law enforcement agencies from names submitted from local law enforcement agencies. The commissioner shall select one insurer representative from each of the following three categories from nominees submitted by insurers in each category: one representative of insurers with average annual automobile liability premiums in California of less than one hundred million dollars ($100,000,000) in the preceding three years; one representative of insurers with average annual automobile liability premiums in California between one hundred million dollars ($100,000,000) and seven hundred million dollars ($700,000,000) in the preceding three years; and one representative of insurers with average annual automobile liability premiums in

California exceeding seven hundred million dollars ($700,000,000) in the preceding three years. At least one insurer representative shall be employed by an insurer having its principal headquarters in California. Members appointed by the commissioner shall serve at the pleasure of the commissioner. Representatives from other agencies shall be selected by the agencies represented.

(c) The advisory committee shall elect one of its members annually to chair its meetings. The chair shall conduct quarterly meetings of the committee in California and at such other times as he or she deems appropriate. Members of the committee shall serve without compensation except for expenses incidental to attendance at meetings called by the chair. A report of the committee's activities shall be included in the report required under Section 1872.9.

(d) The purpose and goals of the advisory committee are as follows:

(1) Recommend to the Bureau of Fraudulent Claims and other appropriate public agencies and private sector entities ways to coordinate the investigation, prosecution, and prevention of automobile insurance claims fraud, including economic automobile theft.

(2) Provide assistance to the bureau towards implementing the goal of reducing the frequency and severity of fraudulent automobile insurance claims (adjusted for population growth and inflation) of 20 percent in urban areas and 10 percent in rural areas of the state within a 24-month period from the effective date of this chapter by utilizing resources set forth in Section 1872.8.

(3) Assure that preventive, investigative, prosecutive, and data collection efforts undertaken by the bureau pursuant to this chapter are efficient, cost-effective, and complement similar efforts undertaken by law enforcement agencies and insurers.

(4) Make recommendations for inclusion in the bureau's annual report required by Section 1872.9.

SEC. 17. Section 1872.7 of the Insurance Code is amended to read:

1872.7. The costs of administration and operation of the Bureau of Fraudulent Claims shall be borne by all of the insurers admitted to transact insurance in this state. The commissioner shall divide those costs among all of those insurers, assessing each company an identical amount adequate to provide the funds for each fiscal year of operation of the bureau. However, the assessment for each company shall not exceed one thousand three hundred dollars ($1,300) in each fiscal year. All moneys received by the commissioner from insurers pursuant to this section shall be transmitted to the Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. All moneys that are deposited in the fund after receipt by the commissioner from insurers pursuant to this section are to be exclusively used for the support of the Bureau of Fraudulent Claims. To the extent the assessments against

insurers made pursuant to this section are not sufficient to fund the entire operations of the bureau, other moneys appropriated to the department, if available, may be used, at the commissioner's discretion, to fund those operations not covered by the assessments. The total budget of the bureau shall be as determined annually in the Budget Act.

SEC. 18. Article 4.5 (commencing with Section 1874.85) is added to Chapter 12 of Part 2 of Division 1 of the Insurance Code, to read:

Article 4.5. Insurer Inspections

1874.85. Except as provided in subdivision (b), an insurer that issues automobile liability or collision policies shall inspect vehicles for which it has approved a claim for the cost of auto body repairs, either during the repair process or after the work has been completed, and the number of vehicles inspected shall be a statistical sampling sufficient to demonstrate to the department the insurer's efforts to reduce fraudulent auto body work during a calendar year.

1874.86. Each insurer subject to this article shall report annually to the department on the following:

(a) The number of vehicles inspected pursuant to Section 1874.85 and the percentage that this number represents of the total number of vehicles for which it paid a claim for the cost of auto body repairs in the prior calendar year.

(b) The results of the inspections, including the nature of any fraud uncovered, and whether or not legal action was pursued.

The department shall make the information provided pursuant to this section available to the California Highway Patrol and the Bureau of Automotive Repair.

1874.87. (a) Each insurer subject to this article shall provide each insured with an Auto Body Repair Consumer Bill of Rights either at the time of application for an automobile insurance policy or following an accident that is reported to the insurer. If the insurer provides the insured with an electronic copy of a policy, the bill of rights may also be transmitted electronically.

(b) The bill of rights shall be a standardized form developed by the department with the purpose of presenting easy-to-read facts for auto insurance consumers. The content of the bill of rights shall be determined by the department, and at a minimum, shall contain information about all of the following:

(1) A consumer's right to select an auto body repair shop for auto body damage covered by the insurance policy and that an insurer may not require this work to be done at a particular auto body repair shop.

(2) The consumer's right to be informed about auto body repairs made with new original equipment crash parts, new aftermarket crash parts, and used crash parts.

(3) The consumer's right to be informed about coverage for towing services, and for a replacement rental vehicle while a damaged vehicle is being repaired.

(4) Toll-free telephone numbers and Internet addresses for reporting suspected fraud or other complaints and concerns about auto body repair shops to the Bureau of Automotive Repair.

(c) The department shall consult with the Bureau of Automotive Repair in determining the information to be contained in the bill of rights.

SEC. 19. Article 4.6 (commencing with Section 1874.90) is added to Chapter 12 of Part 2 of Division 1 of the Insurance Code, to read:

Article 4.6. Auto Insurance Fraud Crisis Areas

1874.90. The commissioner may declare any region of the state as an auto insurance fraud crisis area upon making a finding that auto insurance fraud is endemic to the area. That declaration of an auto insurance fraud crisis area shall be in effect for not more than two years, unless extended or renewed by the commissioner. Auto insurance fraud is endemic to an area if the commissioner determines that organized automobile fraud activity exists in the area and contributes significantly to the cost of automobile insurance in that area.

1874.91. (a) An insurer shall report all claims made in an auto insurance fraud crisis area that are filed within 90 days of the issuance of an automobile insurance policy to the Statistical Analysis Bureau, or its successor. The commissioner shall have the authority to establish, by regulation, the information about claims that shall be reported by insurers.

(b) The commissioner shall have the authority to adopt an alternative to the 90-day standard established in subdivision (a), and shall not be required, notwithstanding any other provision of law, to disclose the standard in effect at any given point in time. Any document directly relating to any action by the commissioner under this article shall be exempt from disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(c) This section shall remain in effect only until January 1, 2006, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 20. Section 549 of the Penal Code is amended to read:

549. Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity

as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by a fine not exceeding fifteen thousand dollars ($15,000), or by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for 16 months, two years, or three years, or by both the fine and the imprisonment in a county jail or in the state prison. A second or subsequent conviction for violating this section is punishable by imprisonment in the state prison, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that fine and imprisonment.

SEC. 21. Section 550 of the Penal Code is amended to read:

550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim

for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double of the value of the fraud.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) Where the claim or amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine, unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double the value of the fraud, or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(B) Where the claim or amount at issue is four hundred dollars ($400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars

($400) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double the value of the fraud, or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, or by a fine of not more than one thousand five hundred dollars ($1,500), or by both that imprisonment and fine.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who

violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.

SEC. 22. Section 10904 is added to the Vehicle Code, to read:

10904. The commissioner may develop a public education campaign to deter participation in auto insurance fraud and to encourage reporting of fraudulent claims.

SEC. 23. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Vehicle Inspection and Repair Fund to the Department of Consumer Affairs for allocation to the Bureau of Automotive Repair for the purposes of Article 10 (commencing with Section 9889.25) of Chapter 20.3 of Division 3 of the Business and Professions Code.

SEC. 24. Sections 5 and 6 shall not become operative until approved by the voters. The Secretary of State is hereby directed to place those provisions on the ballot of the next statewide election for approval by the voters in accordance with applicable provisions of law.

SEC. 25. (a) If Assembly Bill 2594 is also enacted and becomes operative on or before January 1, 2001, and that bill amends Section 650 of the Business and Professions Code, then Section 3 of this bill shall not become operative.

(b) If Assembly Bill 2594 is also enacted and becomes operative on or before January 1, 2001, and that bill amends Section 750 of the Insurance Code, then Section 14 of this bill shall not become operative.

(c) If Assembly Bill 2594 is also enacted and becomes operative on or before January 1, 2001, and that bill amends Section 549 of the Penal Code, then Section 20 of this bill shall not become operative.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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 868

An act relating to public health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. The State Department of Health Services shall do all of the following:

(a) Determine the levels of hexavalent chromium (chromium-6) in the drinking water supplied by the public water systems in the San Fernando Basin aquifer.

(b) In consultation with the Office of Environmental Health Hazard Assessment, assess the exposures and risks to the public due to the levels of hexavalent chromium determined pursuant to subdivision (a).

(c) Report its findings pursuant to subdivisions (a) and (b) to the Governor and the Legislature, no later than January 1, 2002.

CHAPTER 869

An act to amend Sections 1572, 1575.3, 1575.4, 1576, 1580.5, and 1590.5 of, to add Sections 1575.45 and 1590.3 to, the Health and Safety Code, to amend Section 14574 of, and to add Section 14574.1 to, the Welfare and Institutions Code, relating to adult day health care.

[Approved by Governor September 28, 2000. Filed with
Secretary of State September 29, 2000.]

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

SECTION 1. Section 1572 of the Health and Safety Code is amended to read:

1572. (a) The functions and duties of the State Department of Health Services provided for under this chapter shall be performed by the California Department of Aging commencing on the date those functions are transferred from the State Department of Health Services to the California Department of Aging. The authority, functions, and responsibility for the administration of the adult day health care program by the California Department of Aging and the State Department of Health Services shall be defined in an interagency agreement between the two departments that specifies how the departments will work together.

(b) The interagency agreement shall specify that the California Department of Aging is designated by the state department as the agency responsible for community long-term care programs. At a minimum, the interagency agreement shall clarify each department's responsibilities on issues involving licensure and certification of adult day health care providers, payment of adult day health care claims, prior authorization of services, promulgation of regulations, and development of adult day health care Medi-Cal rates. In addition, this agreement shall specify that the California Department of Aging is responsible for making recommendations to the State Department of Health Services regarding licensure as specified in subdivision (h). The interagency agreement shall specify that the State Department of Health Services shall delegate to the California Department of Aging the responsibility of performing the financial and cost report audits and the resolution of audit appeals which are necessary to ensure program integrity. This agreement shall also include provisions whereby the State Department of Health Services and the California Department of Aging shall collaborate in the development and implementation of health programs and services for older persons and functionally impaired adults.

(c) As used in this chapter, ''director'' shall refer to the Director of the California Department of Aging or the Director of the State Department of Health Services as specified in the interagency agreement.

(d) (1) A Long-Term Care Committee is hereby established in the California Department of Aging. The committee shall include, but not be limited to, a member of the California Commission on Aging, who shall be a member of the Long-Term Care Committee of the commission, a representative of the California Association for Adult

Day Services, a representative of the California Association of Area Agencies on Aging, a representative of the California Conference of Local Health Officers, a member of a local adult day health care planning council, nonprofit representatives and professionals with expertise in Alzheimer's disease or a disease of a related disorder, a member of the California Coalition of Independent Living Centers, and representatives from other appropriate state departments, including the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services and the State Department of Rehabilitation, as deemed appropriate by the Director of the California Department of Aging. At least one member shall be a person over 60 years of age.

(2) The committee shall function as an advisory body to the California Department of Aging and advise the Director of the California Department of Aging regarding development of community-based long-term care programs. This function shall also include advice to the Director of the California Department of Aging for recommendations to the State Department of Health Services on licensure, Medi-Cal reimbursement, and utilization control issues.

(3) The committee shall be responsible for the reviewing of new programs under the jurisdiction of the department.

(4) The committee shall assist the Director of the California Department of Aging in the development of procedures and guidelines for new contracts or grants, as well as review and make recommendations on applicants. The committee shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(e) The California Department of Aging shall prepare guidelines for adoption by the local planning councils setting forth principles for evaluation of community need for adult day health care, which shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(f) The California Department of Aging shall review county plans submitted pursuant to Section 1572.9. These county plans shall be approved if consistent with the guidelines adopted by the director pursuant to subdivision (e).

(g) The Director of the California Department of Aging shall make recommendations regarding licensure to the Licensing and Certification Division in the State Department of Health Services. The recommendation shall be based on all of the following criteria:

(1) An evaluation of the ability of the applicant to provide adult day health care in accordance with the requirements of this chapter and regulations adopted hereunder.

(2) Compliance with the local approved plan.

(3) Other criteria that the director deems necessary to protect public health and safety.

(h) A public hearing on each individual proposal for an adult day health care center may be held by the department in conjunction with the local adult day health care council in the county to be served. A hearing shall be held if requested by a local adult day health care council. In order to provide the greatest public input, the hearing should preferably be held in the service area to be served.

SEC. 2. Section 1575.3 of the Health and Safety Code is amended to read:

1575.3. (a) If an adult day health care center or an applicant for a license has not been previously licensed, the department may only issue a provisional license to the center as provided in this section.

(b) A provisional license to operate an adult day health care center shall expire one year from the date of issuance, or at an earlier time as determined by the department at the time of issuance.

(c) Within 30 days prior to the expiration of a provisional license, the department shall give the adult day health care center a full and complete inspection, and, if the adult day health care center meets all applicable requirements for licensure, a regular license shall be issued. If the adult day health care center does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six months.

(d) If the department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the department determines upon its inspection made within 30 days prior to the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate an adult day health care center has been denied a license, the applicant may contest the denial by requesting an adjudicative hearing. The proceedings to review the denial shall be conducted pursuant to Section 100171.

(f) The department shall not apply less stringent criteria when issuing a provisional license pursuant to this section than it applies when issuing a regular license.

SEC. 3. Section 1575.4 of the Health and Safety Code is amended to read:

1575.4. (a) The department may issue a provisional license to an adult day health care center if all of the following conditions are met:

(1) The adult day health care center and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(2) No violation of this chapter or regulations adopted under this chapter exists in the adult day health care center that jeopardizes the health or safety of patients.

(3) The applicant has adopted a plan for correction of any existing violations that is satisfactory to the department.

(b) A provisional license issued under this section shall expire not later than one year after the date of issuance, or at an earlier time as determined by the department at the time of issuance, and may not be renewed.

(c) At the expiration of the provisional license period, the department shall assess the adult day health care center's full compliance with licensure requirements. If the adult day health care center meets all applicable requirements for licensure, the department shall issue a regular license.

(d) The department shall not apply less stringent criteria when issuing a provisional license pursuant to this section than it applies when issuing a regular license.

SEC. 4. Section 1575.45 is added to the Health and Safety Code, immediately following Section 1575.4, to read:

1575.45. (a) If the department determines that the adult day health care center operating under a provisional license has serious deficiencies that pose a risk to the health and safety of the participants, the department may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(b) When appropriate, the California Department of Aging and the department shall coordinate an action or actions to ensure consistency and uniformity.

(c) The licensee shall have the right to dispute an action or actions taken pursuant to paragraphs (2) and (3) of subdivision (a). The department shall accept, consider, and resolve disputes filed pursuant to this subdivision by a licensee in a timely manner.

(d) The director shall ensure that public records accurately reflect the current status of any action or actions taken pursuant to this section, including any resolution of disputes.

SEC. 5. Section 1576 of the Health and Safety Code is amended to read:

1576. All applications for a new license shall be submitted to the planning council for the county in which the adult day health care center will be located, if an approved planning council exists, which shall review the application as provided in Section 1573. The director shall approve the application if it is determined to be consistent with the existing county plan, no substantial basis for denial of the license exists under Section 1575.7, and the applicant has met all the requirements for licensure set forth in this chapter and regulations adopted hereunder. Otherwise the director shall deny issuance of the license.

SEC. 6. Section 1580.5 of the Health and Safety Code is amended to read:

1580.5. (a) Every adult day health care center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Inspections shall be conducted prior to the expiration of certification or at least every two years and as often as necessary to ensure the quality of care being provided, whether initiated by the state department or pursuant to Section 1580.9. As resources permit, an inspection may be conducted prior to, as well as within the first 90 days of, adult day health care center operation.

(b) After each inspection, the state department shall notify the adult day health care center in writing of any deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility. Upon a finding of noncompliance, the state department may also assess a civil penalty not to exceed fifty dollars ($50) per day for each violation continuing beyond the date fixed in the notice for correction. If the violation is not corrected within that time, the civil penalty shall accrue from the date of receipt of the notice by the licensee. If the violation continues beyond the date fixed for correction, the state department may also initiate action against the licensee in accordance with Article 7 (commencing with Section 1595).

(c) When a civil penalty is to be assessed pursuant to this section, the notice shall specify the amount thereof and shall be served upon the licensee in a manner prescribed by subdivision (c) of Section 11505 of the Government Code. Any judicial action required to collect a civil penalty assessed pursuant to this section shall be brought by the Attorney General acting on behalf of the state department in the superior court of the county in which the adult day health care center is located.

SEC. 7. Section 1590.3 is added to the Health and Safety Code, to read:

1590.3. (a) The denial, suspension, or revocation of a center's license shall be considered immediate grounds for the denial, suspension, or termination of the center's certification.

(b) Proceedings to deny an application for licensure or certification, suspend a license or certification, or revoke a license or terminate certification shall be consolidated whenever possible.

SEC. 8. Section 1590.5 of the Health and Safety Code is amended to read:

1590.5. Proceedings for the suspension, revocation, or denial of a license under this article shall be conducted in accordance with Section 100171. Except as provided in Section 1591, Section 100171 shall prevail in the event of a conflict between this chapter and Section 100171. The director shall ensure that public records accurately reflect the current status of any potential adverse action or actions, including the resolution of disputes.

SEC. 9. Section 14574 of the Welfare and Institutions Code is amended to read:

14574. (a) The director shall terminate the Medi-Cal certification of any adult day health care provider at any time if he or she finds the provider is not in compliance with standards prescribed by this chapter or chapter 7 (commencing with Section 14000) or regulations adopted pursuant to these chapters. The director shall give reasonable notice of his or her intention to terminate the certification to the provider and participants in the plan. The notice shall state the effective date of, and the reason for, the termination.

(b) The denial, suspension, or termination of certification shall be considered immediate grounds for denial, suspension, or revocation of the license.

(c) Proceedings to deny an application for certification or licensure, terminate or suspend certification, or revoke or suspend licensure shall be consolidated whenever possible.

(d) The California Department of Aging and the State Department of Health Services shall coordinate an action or actions to the extent appropriate to ensure consistency and uniformity.

(e) The provider shall have the right to appeal the department's decision made pursuant to Section 14123.

SEC. 10. Section 14574.1 is added to the Welfare and Institutions Code, to read:

14574.1. (a) Every adult day health care center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Inspections shall be conducted prior to the expiration of certification, but at least every two years, and as often as necessary to ensure the quality of care being provided. As resources permit, an inspection may be conducted prior to, as well as within, the first 90 days of operation.

(b) If the department determines that the adult day health care center has serious deficiencies that pose a risk to the health and safety of the

participants, the department may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(c) The provider shall have the right to dispute an action taken under paragraphs (2) and (3) of subdivision (b). The department shall accept, consider, and resolve disputes filed pursuant to this subdivision in a timely manner.

(d) The director shall ensure that public records accurately reflect the current status of any potential actions including the resolution of disputes.

CHAPTER 870

An act to amend Section 109935 of, and to add Sections 109951 and 109971 to, the Health and Safety Code, relating to environmental health.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 109935 of the Health and Safety Code is amended to read:

109935. ''Food'' means any of the following:

(a) Any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal.

(b) Any article used or intended for use as a component of any article designated in subdivision (a).

(c) Any article defined as food pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

SEC. 2. Section 109951 is added to the Health and Safety Code, to read:

109951. ''Infant formula'' shall have the same definition as that term is used in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(z)).

SEC. 3. Section 109971 is added to the Health and Safety Code, to read:

109971. ''Medical food'' means any product that meets the definition of medical food in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360ee(b)(3)).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 871

An act to amend Sections 20420 and 20436 of, and to add Section 20432 to, the Government Code, relating to retirement.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 20420 of the Government Code is amended to read:

20420. ''Local safety member'' includes all local police officers, local sheriffs, firefighters, safety officers, county peace officers, and school safety members, employed by a contracting agency who have by contract been included within this system.

SEC. 2. Section 20432 is added to the Government Code, to read:

20432. (a) ''Local sheriff'' means any officer or employee of a sheriff's office of a contracting agency, except one 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 even though the employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement service, but not excepting persons employed and qualifying as deputy sheriffs or equal or higher rank irrespective of the duties to which they are assigned.

(b) ''Local sheriff'' does not include persons employed to perform identification or communication duties other than persons in that employment on August 4, 1972, who elected within 90 days thereafter to be local safety members. A contracting agency may elect by amendment to its contract to include as ''local sheriff'' all persons who were employed to perform identification or communication duties on August 4, 1972, and who elect within 60 days of the effective date of the contract amendment to be local safety members. The election shall apply

to the person's past as well as future service in the employment held on the effective date but shall not apply to service following any subsequent acceptance of appointment to a position other than that held on the effective date. This subdivision shall not apply to persons employed and qualified as deputy sheriffs or equal or higher rank.

(c) Any officer or employee who is a local sheriff as defined in this section shall not be deemed to be a county peace officer, as defined in Section 20436, for any purpose under this part.

(d) This section shall only apply to a county of the sixth class as defined in Sections 28020 and 28027, as amended by Chapter 1204 of the Statutes of 1971.

(e) This section shall not apply to the employees of any contracting agency nor to any such agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20474 or by express provision in its contract with the board.

SEC. 3. Section 20436 of the Government Code is amended to read:

20436. ''County peace officer'' means the sheriff and any officer or employee of a sheriff's office of a contracting agency, except one 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 even though the employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement service, but not excepting persons employed and qualifying as deputy sheriffs or equal or higher rank irrespective of the duties to which they are assigned. Any other provision in this part to the contrary notwithstanding, "county peace officers'' shall also include and mean any inspector, investigator, detective, or person with a comparable title, in any district attorney's office of a contracting agency whose principal duties are to investigate crime and criminal cases and who receives compensation for this service.

''County peace officer'' does not include persons employed to perform identification or communication duties other than persons in that employment on August 4, 1972, who elected within 90 days thereafter to be local safety members. A contracting agency may elect by amendment to its contract to include as ''county peace officer'' all persons who were employed to perform identification or communication duties on August 4, 1972, and who elect within 60 days of the effective date of the contract amendment to be local safety members. The election shall apply to the person's past as well as future service in the employment held on the effective date but shall not apply to service following any subsequent acceptance of appointment to a position other than that held on the effective date. This paragraph shall not apply to

persons employed and qualified as deputy sheriffs or equal or higher rank.

''County peace officer'' does not include any officer or employee who is a local sheriff, as defined in Section 20432.

CHAPTER 872

An act to add Chapter 6 (commencing with Section 16645) to Part 2 of Division 4 of Title 2 of the Government Code, relating to use of state funds.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

It is the policy of the state not to interfere with an employee's choice about whether to join or to be represented by a labor union. For this reason, the state should not subsidize efforts by an employer to assist, promote, or deter union organizing. It is the intent of the Legislature in enacting this act to prohibit an employer from using state funds and facilities for the purpose of influencing employees to support or oppose unionization and to prohibit an employer from seeking to influence employees to support or oppose unionization while those employees are performing work on a state contract.

SEC. 2. Chapter 6 (commencing with Section 16645) is added to Part 2 of Division 4 of Title 2 of the Government Code, to read:

CHAPTER 6. PROHIBITION ON USE OF STATE FUNDS AND FACILITIES TO ASSIST, PROMOTE, OR DETER UNION ORGANIZING

16645. For purposes of this chapter, the following terms have the following meanings:

(a) ''Assist, promote, or deter union organizing'' means any attempt by an employer to influence the decision of its employees in this state or those of its subcontractors regarding either of the following:

(1) Whether to support or oppose a labor organization that represents or seeks to represent those employees.

(2) Whether to become a member of any labor organization.

(b) ''Employer'' means any individual, corporation, unincorporated association, partnership, government agency or body, or other legal entity that employs more than one person in the state.

(c) ''State contractor'' means any employer that receives state funds for supplying goods or services pursuant to a written contract with the state or any of its agencies. ''State contractor'' includes an employer that receives state funds pursuant to a contract specified in paragraph (2) of subdivision (d). For purposes of this chapter, the contract shall be deemed to be a contract with a state agency.

(d) (1) ''State funds'' means any money drawn from the State Treasury or any special or trust fund of the state.

(2) ''State funds'' includes any money appropriated by the state and transferred to any public agency, including a special district, that is used by the public agency to fund, in whole or in part, a service contract in excess of two hundred fifty thousand dollars ($250,000).

(e) ''State property'' means any property or facility owned or leased by the state or any state agency.

16645.1. (a) No state funds shall be used to reimburse a state contractor for any costs incurred to assist, promote, or deter union organizing.

(b) Every request for reimbursement from state funds by a state contractor shall include a certification that the contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. A state contractor that incurs costs to assist, promote, or deter union organizing shall maintain records sufficient to show that no reimbursement from state funds has been sought for those costs. The state contractor shall provide those records to the Attorney General upon request.

(c) A state contractor is liable to the state for the amount of any funds obtained in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

(d) This section does not apply to a fixed-price contract or to any other arrangement by which the amount of the payment of state funds does not depend on the costs incurred by the state contractor.

16645.2. (a) The recipient of a grant of state funds, including state funds disbursed as a grant by a public agency, shall not use the funds to assist, promote, or deter union organizing.

(b) For purposes of this section, each recipient of a grant of state funds shall account for those funds as follows:

(1) State funds designated by the grantor for use for a specific expenditure of the recipient shall be accounted for as allocated to that expenditure.

(2) State funds that are not designated as described in paragraph (1) shall be allocated on a pro rata basis to all expenditures by the recipient that support the program for which the grant is made.

(c) Prior to the disbursement of a grant of state funds, the recipient shall provide a certification to the state that none of the funds will be used

to assist, promote, or deter union organizing. Any recipient that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures. The grant recipient shall provide those records to the Attorney General upon request.

(d) A grant recipient is liable to the state for the amount of any funds expended in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.3. (a) No state contractor shall assist, promote, or deter union organizing by employees who are performing work on a service contract, including a public works contract, for the state or a state agency.

(b) A state contractor that violates subdivision (a) is liable for a civil penalty of one thousand dollars ($1,000) per employee per violation.

16645.4. (a) A state contractor that receives state funds in excess of fifty thousand dollars ($50,000) pursuant to a contract with the state or a state agency shall not use those state funds to assist, promote, or deter union organizing during the life of the contract, including any extensions or renewals of the contract. The dollar threshold in this subdivision, however, does not limit the application of other provisions of this chapter that restrict the use of state funds.

(b) All contracts in excess of fifty thousand dollars ($50,000) and that are awarded by the state or a state agency shall contain the prohibition stated in subdivision (a).

(c) A state contractor who is subject to subdivision (a) and who makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that no state funds were used for those expenditures. The state contractor shall provide those records to the Attorney General upon request.

(d) A state contractor is liable to the state for the amount of any funds expended made in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.5. (a) An employer conducting business on state property pursuant to a contract or concession agreement with the state or a state agency, or a subcontractor on such a contract or agreement, shall not use state property to hold a meeting with any employees or supervisors if the purpose of the meeting is to assist, promote, or deter union organizing. This section does not apply if the state property is equally available, without charge, to the general public for holding a meeting.

(b) An employer that violates subdivision (a) shall be liable to the state for a civil penalty equal to one thousand dollars ($1,000) per employee per meeting.

16645.6. (a) A public employer receiving state funds shall not use any of those funds to assist, promote, or deter union organizing.

(b) Any public official who knowingly authorizes the use of state funds in violation of subdivision (a) shall be liable to the state for the amount of those funds.

16645.7. (a) A private employer receiving state funds in excess of ten thousand dollars ($10,000) in any calendar year on account of its participation in a state program shall not use any of those funds to assist, promote, or deter union organizing.

(b) As a condition of participating in a state program pursuant to which it will receive state funds in excess of ten thousand dollars ($10,000) in any calendar year, a private employer shall provide a certification to the state that none of those funds will be used to assist, promote, or deter union organizing.

(c) A private employer who is subject to subdivision (a) and who makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that no state funds were used for those expenditures. The private employer shall provide those records to the Attorney General upon request.

(d) A private employer is liable to the state for any funds expended in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.8. (a) A civil action for a violation of this chapter may be brought by the Attorney General, or by any state taxpayer, on behalf of the people of the State of California, for injunctive relief, damages, civil penalties, and other appropriate equitable relief. All damages and civil penalties collected pursuant to this chapter shall be paid to the State Treasury.

(b) Before filing an action under this section, a taxpayer shall give written notice to the Attorney General of the alleged violation and the intent to bring suit. If the Attorney General commences a civil action for the same alleged violation within 60 days of receiving the notice, a separate action by the taxpayer shall be barred.

(c) A taxpayer may intervene as a plaintiff in any action brought under this section.

(d) A prevailing plaintiff in any action under this section is entitled to recover reasonable attorney's fees and costs. A prevailing taxpayer intervenor who makes a substantial contribution to an action under this section is entitled to recover reasonable attorney's fees and costs.

16646. (a) For purposes of this chapter, any expense, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be treated as paid or incurred for that activity.

(b) For purposes of accounting for expenditures, if state funds and other funds are commingled, any expenditures to assist, promote, or

deter union organizing shall be allocated between state funds and other funds on a pro rata basis.

16647. This chapter does not apply to an activity performed, or to an expense incurred, in connection with any of the following:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the employer's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into, or carrying out a voluntary recognition agreement with a labor organization.

16648. This chapter does not apply to an expenditure made prior to January 1, 2001, or to a grant or contract awarded prior to January 1, 2001, unless the grant or contract is modified, extended, or renewed after January 1, 2001. Nothing in this chapter requires employers to maintain records in any particular form.

16649. The provisions of this chapter are severable. If any section or portion of this chapter, or any application thereof, is held invalid, in whole or in part, that invalidity shall not effect any other section, portion, or application that can be given effect.

CHAPTER 873

An act to amend Sections 31402, 34506.4, and 40000.15 of, and to add Sections 24002.5 and 34506.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. The Legislature finds and declares that it is the intent of the Legislature that nothing in the act adding this section may be construed to require that farm labor vehicles be added to the state's Biennial Inspection Terminal program or to make the drug testing and other testing requirements included in that program applicable to farm labor vehicles.

SEC. 2. Section 24002.5 is added to the Vehicle Code, to read:

24002.5. (a) No person may operate a farm labor vehicle that is in a condition that presents an immediate safety hazard or in violation of Section 24004 or 31402.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), or both that fine and a sentence of confinement for not more than six months in the county jail. No part of any fine imposed under this section may be suspended.

(c) As used in this section, an ''immediate safety hazard'' is any equipment violation described in subdivision (a) of Section 31401 or Section 31405, including any violation of a regulation adopted pursuant to those provisions.

(d) Any member of the Department of the California Highway Patrol may impound a farm labor vehicle operated in violation of this section pursuant to Section 34506.4.

SEC. 3. Section 31402 of the Vehicle Code is amended to read:

31402. (a) No person may operate any farm labor vehicle except as may be necessary to return the unladen vehicle or combination of vehicles to the residence or place of business of the owner or driver, or to a garage, after notice by the department to the owner that the vehicle is in an unsafe condition or is not equipped as required by this code, or any regulations adopted thereunder, until the vehicle and its equipment have been made to conform with the requirements of this code, or any regulations adopted thereunder, and approved by the department.

(b) (1) A person who operates a farm labor vehicle in violation of this section while the vehicle is in a condition that presents an immediate safety hazard is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), or both that fine and a sentence of confinement for not more than six months in the county jail. No part of any fine imposed under this subdivision may be suspended.

(2) As used in this subdivision, an ''immediate safety hazard'' is any equipment violation described in subdivision (a) of Section 31401 or Section 31405, including any violation of a regulation adopted pursuant to that provision or those provisions.

(c) Any member of the Department of the California Highway Patrol may impound a farm labor vehicle operated in violation of this section pursuant to Section 34506.4. A farm labor vehicle shall not be impounded unless a member of that department determines that a person has failed to comply with subdivision (a) or a person fails to comply with a lawful out-of-service order, as described in subdivision (b) of Section 2800.

SEC. 4. Section 34506.4 of the Vehicle Code is amended to read:

34506.4. (a) Any member of the Department of the California Highway Patrol may remove from the highway and have placed in a storage facility, any vehicle described in subdivision (a) of Section 22406, subdivision (g) of Section 34500, and any motortruck with a

gross vehicle weight rating of more than 10,000 pounds, which is in an unsafe condition.

(b) Any member of the Department of the California Highway Patrol may impound any farm labor vehicle operated in violation of subdivision (b) of Section 2800, subdivision (a) of Section 24002.5, or subdivision (a) of Section 31402, subject to the following requirements:

(1) A farm labor vehicle impounded for a first violation of subdivision (b) of Section 2800, subdivision (a) of Section 24002.5, or subdivision (a) of Section 31402 may be released within 24 hours upon delivery to the impounding authority of satisfactory proof that the vehicle will be legally moved or transported to a place of repair.

(2) A farm labor vehicle shall be impounded for not less than 10 days for a second violation of subdivision (b) of Section 2800, subdivision (a) of Section 24002.5, or subdivision (a) of Section 31402, or any combination of two of those provisions, if the original equipment or maintenance violation has not been repaired to comply with existing law. The farm labor vehicle shall be released after 10 days upon delivery to the impounding authority of satisfactory proof that the vehicle has been repaired to comply with existing law, or upon delivery to the impounding agency of satisfactory proof that the vehicle will be lawfully moved or transported to a place of repair.

(3) A farm labor vehicle shall be impounded for not less than 30 days for a third or subsequent violation of subdivision (b) of Section 2800, subdivision (a) of Section 24002.5, or subdivision (a) of Section 31402, or any combination of three or more of those provisions, if the original equipment or maintenance violation has not been repaired to comply with existing law. The farm labor vehicle shall be released after 30 days upon delivery to the impounding authority of satisfactory proof that the vehicle has been repaired to comply with existing law, or upon delivery to the impounding agency of satisfactory proof that the vehicle will be lawfully moved or transported to a place of repair.

(c) All towing and storage fees for a vehicle removed under this section shall be paid by the owner.

SEC. 5. Section 34506.5 is added to the Vehicle Code, to read:

34506.5. (a) A farm labor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in violation of subdivision (b) of Section 2800, subdivision (a) of Section 24002.5, or subdivision (a) of Section 31402 and has been impounded for a second or subsequent time pursuant to paragraph (3) of subdivision (b) of Section 34506.4.

(b) (1) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to paragraph (1) or (2) of subdivision (n) of Section 14607.6.

(2) If it is determined that the necessary repairs had been completed and the farm labor vehicle complied with existing laws at the time of impoundment, the agency employing the person who directed the impoundment shall be responsible for the costs incurred for towing and storage.

(c) Procedures established in subdivisions (e), (f), (g), (h), (i), (j), (k), (*l*), (o), (p), (q), (r), (t), (u), and (v) of Section 14607.6 shall be utilized for the forfeiture of an impounded farm labor vehicle.

SEC. 6. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

Subdivision (a) of Section 23110, relating to throwing at vehicles.

Section 23152, relating to driving under the influence.

Subdivision (b) of Section 23222, relating to possession of marijuana.

Subdivision (a) or (b) of Section 23224, relating to persons under 21 years of age knowingly driving, or being a passenger in, a motor vehicle carrying any alcoholic beverage.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

Section 24002.5, relating to unlawful operation of a farm vehicle.

Section 24011.3, relating to vehicle bumper strength notices.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometers.

Section 28051.5, relating to devices to reset odometers.

Subdivision (d) of Section 28150, relating to possessing four or more jamming devices.

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.